



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC NO. 298 OF 2018**

**PETER MWEBI.....PLAINTIFF**

**VERSUS**

**LILIAN ANYANGO OKELLO Alias DORIS**

**ELIUD OTIENO ODHIAMBO .....DEFENDANTS**

**JUDGMENT**

1. By a Plaint dated and filed on 17<sup>th</sup> December, 2018, the Plaintiff claims to be the registered proprietor of all those pieces of land situated in Mombasa County known as PLOT NUMBERS MN/1/19099, MN/1/19067, MN/1/19066 and MN/1/19065 being TITLE NUMBERS CR 55409, 56721, 55411 and 55412 as delineated on Land Survey Plan Numbers 334618, 334586, 334585 and 334584 (hereinafter referred to as suit properties).

2. The Plaintiff states that the defendants by themselves, their agents, servants and/or employees have wrongfully entered the suit properties and thereby taken possession of them and commenced construction of buildings and/or structures without any colour of right or any legal right known to law. That by reason of the defendants' actions, the plaintiff has been deprived of the use and enjoyment of the land and has thereby suffered loss and damage. The plaintiff avers that despite demand and warning of intention to sue in default, the defendants have neglected and refused to make good the plaintiff's request/demands, hence this suit.

3. The plaintiff's claim against the defendants is for orders as follows: .

**i. A declaration that the Plaintiff is entitled and is the legal owner of the suit properties.**

**ii. An eviction order by way of a mandatory injunction that the defendants and/or their agents, servants or other persons do demolish and/or pull to ground level the illegal structures standing on the suit land and thereafter vacate with immediate effect the properties known as sub-division NUMBERS PLOT NUMBERS MN/1/19099, MN/1/19067, MN/1/19066 and MN/1/19065 being title numbers cr.55409, 56721, 55411 and 55412 the supervision of an authorized Police officer from Bamburi Police Station.**

**iii. A permanent Injunction restraining the defendants whether by themselves, their servants, agents or otherwise howsoever from encroaching and/or trespassing and/or taking possession moving into occupy, developing and constructing any structures whatsoever on the suit properties known as subdivision numbers PLOT NUMBERS MN/1/19099, MN/1/19067, MN/1/19066 and MN/1/19065 being title numbers cr.55409 56721, 55411 and 55412.**

**iv. Costs of the suit and interest thereon at court rates.**

**vi. Further and/or any other relief that this Honourable court shall deem fit and appropriate.**

4. The defendants were served with summons to enter appearance but failed to do so. Upon request by the plaintiff, interlocutory judgment was entered against the defendants on 23<sup>rd</sup> April 2019. The suit proceeded for formal proof on 3<sup>rd</sup> June, 2019 when the Plaintiff testified and did not call any witness.

5. The Plaintiff relied on his witness statement filed on 17<sup>th</sup> December 2018 which basically reiterated the facts as contained in the plaint. The plaintiff added that the defendants have denied him access into the suit properties and have threatened him not to ever step into the said properties and hence the need for police assistance. The Plaintiff produced copies of the title documents for the suit properties and survey report dated 22<sup>nd</sup> August 2018 to support his case.

6. The court has carefully considered the evidence on record. The issue that calls for determination is whether the plaintiff has established that he is the owner of the suit properties and whether the defendants have trespassed on it and also whether the plaintiff is entitled to the prayers sought.

7. The Plaintiff has tendered documentary evidence that show that the suit properties are registered in his name. He produced copies of the titles as P.exhibit 1. He also produced a survey report dated 22<sup>nd</sup> August 2018 prepared by Edward Kiguru Land Surveyors detailing the encroachments. From the material placed before me, there is no dispute that the plaintiff is the registered owner of the suit properties. Section 24(a) of the Land Registration Act provides that the registration of a person as the proprietor of land vests in that person the absolute ownership of the suit land together with all rights and privileges associated with that status. Section 26(1) of the said Act provides that the certificate of title issued by the Registrar upon registration or to a purchaser of land upon transfer shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner thereof and that the said title shall not be challenged save on ground of fraud or misrepresentation to which the holder is shown to be a party or where the title is acquired illegally, unprocedurally or through a corrupt scheme.

8. The defendants did not defend this suit. The plaintiff's title over the suit properties is therefore not challenged on any of the grounds mentioned above or at all. In the absence of any such challenge, I am enjoined by law to take the plaintiff on the basis of the titles he holds in his name to be the absolute and indefeasible owner of the suit properties. As the absolute proprietor of the suit properties, the plaintiff is entitled to enjoy rights and privileges associated with such ownership which includes exclusive use, possession and enjoyment thereof without interference by any third party. The Plaintiff has asserted that the defendants entered the suit properties forcefully and started utilizing the properties as their property and went ahead to build houses or structures thereon.

9. The plaintiff's evidence has not been challenged and on the basis of the unchallenged evidence, I am satisfied that the plaintiff has proved that the defendants entered the suit properties unlawfully and constructed buildings and structures thereon. The defendants having unlawfully entered the suit properties without the permission of the plaintiff are trespassers on the suit properties and the plaintiff is entitled to judgment against them as prayed in the Plaint. Accordingly, I do find that the plaintiff has proved his case on a balance of probabilities. In the end I will enter judgment for the plaintiff against the defendants in the following terms.

**a. A declaration that the plaintiff is the legal owner and is entitled to the suit properties known as sub-division numbers PLOT NUMBERS MN/1/19099, MN/1/19067, MN/1/19066 and MN/1/19065 being TITLE NUMBERS CR 55409, 56721, 55411 and 55412**

**b. The defendants and/or their agents, servants or other persons claiming through them be and are hereby ordered to vacate and deliver vacant possession to the plaintiff and do demolish and/or pull down to ground level the illegal structures standing on the suit properties within 30 days from the date of service of the decree herein upon them.**

**c. In default of (b) above as aforementioned the plaintiff shall be entitled to an order of eviction for forcible removal of the defendants whether by themselves, their agents and/or servants or otherwise howsoever from remaining on or continuing in occupation of the suit properties and demolition of the illegal structures standing thereon under supervision of an authorized police officer from Bamburi Police Station.**

**d. A permanent injunction be and is hereby issued restraining the Defendants whether by themselves, their servants, agents or otherwise howsoever from encroaching, trespassing, remaining on, taking, possession, or continuing in occupation of the suit properties.**

**e. The plaintiff shall have costs of the suit.**

**DATED, SIGNED and DELIVERED at MOMBASA this 16<sup>th</sup> day of October 2019.**

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**C.K. YANO**

**JUDGE**

**IN THE PRESENCE OF:**

Olwande for plaintiff

No appearance for defendants

Yumna Court Assistant

**C.K. YANO**

**JUDGE**