



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

LAND AND ENVIRONMENT CASE NO. 156 OF 2014

LEVINOUS OMUMALAKANI.....PLAINTIFF

VERSUS

JANE NASAMBU.....1ST DEFENDANT

PRISCANASIMIYU.....2ND DEFENDANT

CATHRINE NYAMBURA.....3RD DEFENDANT

R U L I N G

By a plaint dated 18th August 2014 and filed herein on 22nd August 2014, the plaintiffs sought Judgment against defendants in the following terms:-

- a) An order directing the defendants, whether by themselves, their agents employees, servants or any other person claiming through the defendants to surrender vacant possession of LR NO BUNGOMA/ NAITIRI/1907 to the plaintiff and to remove all the illegal structures therefrom immediately and in default an eviction and demolition order to issue forthwith against the defendants, their agents employees, servants and any other persons claiming through the defendants.
- b) A permanent injunction restraining the defendants by themselves, their agents, employees, servants and any other person claiming through the defendants from interfering with the plaintiff's proprietary rights as by law provided.
- c) Any other relief the Court deems fit to grant.
- d) Costs of this suit.

The basis of the plaintiff's claim was that whereas he is the registered proprietor of the land parcel NO BUNGOMA /NAITIRI/1907 (the suit land), the defendants have without his consent unlawfully entered thereon, taken possession and erected structures thus interfering with his quiet enjoyment of the same in outright contravention of the law.

The defendants did not enter appearance nor file any defence to the plaintiff's claim and the matter came up before **MUKUNYA J** for formal proof on 13th May 2015 when the plaintiff and his witness testified. In a Judgment delivered on 23rd June 2015, **MUKUNYA J** entered Judgment for the plaintiff as claimed in his plaint. A decree followed.

The plaintiff has now moved this Court by his Notice of Motion dated 20th April 2018 seeking the following orders:-

1. Spent
2. That an order of demolition of the defendants' buildings and all structures illegally evicted on land parcel NO BUNGOMA/NAITIRI/1907 be issued.
3. That an order for eviction of the defendants from suit land NO BUNGOMA/NAITIRI/1907 be issued.
4. That the officer commanding **MBAKALO POLICE STATION** or any nearest Police Station or any officers delegated under their command be ordered to provide M/S **ESHIKHONI AUCTIONEERS** with adequate security while executing the above orders.

5. That costs of the application be paid by the defendants.

The said application is premised on the grounds set out therein and supported by the plaintiff's affidavit.

The gist of the application is that having been served with this Court's decree following the Judgment dated 23rd June 2015, the defendants have ignored it and refused to comply with the same.

Though served with the said application, the defendants have not filed any response to the same. The said application has, just like the main suit, proceeded to hearing ex – parte.

It is clear from the record that there is a Judgment entered against the defendants in terms of the orders sought by the plaintiff in respect to the suit land. A decree issued and was served upon the defendants. There is no evidence that any appeal was filed against the said Judgment which was delivered over four (4) years ago. The consequence of that Judgment is that the defendants are unlawful occupants of the suit land and are liable to be evicted therefrom. That is clear from the provisions of **Section 152 B of the LAND ACT 2012** which reads:-

“An unlawful occupant of private, community or public land shall be evicted in accordance with this Act.”

In the circumstances, the plaintiff is entitled to the orders sought in his Notice of Motion dated 20th April 2018 which is not contested. I therefore make the following orders:-

- 1. The plaintiff's Notice of Motion is allowed in terms of prayers 2, 3, and 4.**
- 2. The eviction be carried out as provided for under the relevant provisions of Section 152 of the Land Act.**
- 3. No order as to costs.**

Boaz N. Olao.

J U D G E

9th October 2019.

Ruling dated, delivered and signed in Open Court this 9th day of October 2019 at Bungoma.

Mr Were for Mr. Otinga for the Applicant present

Respondent absent

Joy/Okwaro – Court Assistants

Boaz N. Olao.

J U D G E

9th October 2019.