



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 70 OF 2008**

**ANTHONY NDUNDA MWANIKI.....PLAINTIFF**

**VERSUS**

**WAVINYA BERNARD NZOMO.....DEFENDANT**

**JUDGMENT**

1. In the Plaint dated 3<sup>rd</sup> May, 2008 and amended on 28<sup>th</sup> February, 2018, the Plaintiff averred that at all material times, he was the registered owner of land known as Mbiuni/Kabaa/15 situated at Mbiuni within Machakos County (*the suit property*).
2. The Plaintiff averred that in the year 2007, the Defendant wrongfully and illegally entered on the suit property and deprived the Plaintiff of the use of the land. The Plaintiff is seeking for a permanent injunction to issue restraining the Defendant whether by himself or agents from trespassing on the suit property. The Plaintiff is also praying for an order of eviction of the Defendant from the suit property.
3. The Defendant filed a Defence in which she averred that she is the wife of the late Bernard Nzomo; that the late Bernard Nzomo bought the suit property; that the late Nzomo was shown the boundaries of the suit property by John Mwaniki and his wife Mulolo and that the two are the Plaintiff's parents.
4. According to the Defendant's Defence, she moved on the suit land with her late husband in 1991; that her husband, mother, grandmother and sister-in-law, have all been buried on the suit land and that it was only in the year 2007 that the Plaintiff started threatening him with eviction from the suit land.
5. When this matter came up for hearing on 5<sup>th</sup> March, 2019, neither the Defendant nor her advocate turned up. The matter proceeded for hearing in her absence. The Plaintiff, PW1, informed the court that he is the registered proprietor of land known as Mbiuni/Kabaa/1055 which is a sub-division of parcel of land known as Mbiuni/Kabaa/15 and that parcel number Mbiuni/Kabaa/15 initially belonged to John Mwaniki Kioko (*deceased*).
6. According to PW1, during the Succession proceedings in Cause No. 227 of 2004, the whole parcel of land number Mbiuni/Kabaa/15 was issued to him and that he later sub-divided parcel number 15 to create parcel number 1055 which was registered in his name on 21<sup>st</sup> January, 2013.
7. PW1 informed the court that in the year 2007, the Defendant trespassed on parcel number Mbiuni/Kabaa/1055 and threatened him with physical violence; that the Defendant caused some structures to be erected on the suit land and that the Defendant has refused to vacate the suit land.
8. The Plaintiff produced in evidence the Title Deeds for parcels of land known as Mbiuni/Kabaa/15 measuring approximately 20.0 Ha and Mbiuni/Kabaa/1055 measuring approximately 8.28 Ha and the Certificate of Confirmation dated 8<sup>th</sup> February, 2005.
9. The copy of the Title Deed for parcel number Mbiuni/Kabaa/15 was issued to Anthony Ndunda Mwaniki on 7<sup>th</sup> June, 2005. According to the Plaintiff, he was registered as the owner of the said land pursuant to the Certificate of Confirmation of Grant dated 8<sup>th</sup> February, 2005, having inherited the whole land from the late John Mwaniki Kioko.
10. The Defendant has not controverted the evidence produced by the Plaintiff showing that it is the court in Nairobi Succession Cause No. 227 of 2004 that allocated the Plaintiff the suit land. Indeed, the Defendant did not produce any evidence to show that she has any legal or equitable interest in the suit land.
11. Considering that the suit land is registered in favour of the Plaintiff pursuant to an order of the court in the Succession case, and in the absence of evidence to show that the title for parcel number Mbiuni/Kabaa/15 was acquired fraudulently, I allow the Plaintiff's amended Plaint dated 22<sup>nd</sup> August, 2018 as follows:

*a. Permanent injunction be and is hereby issued restraining the Defendant whether by herself, servants or agents or otherwise however, from erecting structures, remaining or continuing in occupation of the suit property known as Mbiuni/Kabaa/1055.*

*b. The Defendant to give vacant possession of the suit property known Mbiuni/Kabaa/1055.*

*c. The Defendant to pay the costs of the suit.*

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF OCTOBER, 2019.

O.A. ANGOTE

JUDGE