



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 6 OF 2018**

**JUNE GERALDINE WAMBUI KIRAGU.....PLAINTIFF**

**VERSUS**

**EMMANUEL BAHATI NGALA.....DEFENDANT**

**JUDGMENT**

1. By her Complaint dated and filed herein on 18<sup>th</sup> January, 2018, June Geraldine Wambui Kiragu (hereafter “the Plaintiff”) prays for Judgment against Emmanuel Bahati Ngala (the Defendant) for:

- a) A permanent injunction to issue restraining the Defendant, his servants, agents, tenants or any other person whether acting on their own or on the Defendant’s behalf from dispossessing, occupying, alienating, transferring, developing, and remaining on and/or dealing in any manner with the Plaintiffs parcels of land known as LR No. CR 19825/1, Portion No. 4514 (original No. 366/30) Malindi and LR No. CR 19826/1 Portion No. 4515 (Original No. 366/31) Malindi.**
- b) That an order do issue to compel the defendant and/or his servants, agents to give vacant possession to the Plaintiffs parcels of land (as described) and to remove any construction materials or structures erected therein.**
- c) A declaration that the Plaintiff is the bonafide owner of all those parcels of land (as described above).**
- d) That this Honourable Court do make an order directing the Officer Commanding Station, Malindi Police Station to supervise execution and full compliance of the Court Order.**
- e) Costs of this suit.**
- f) Any other relief that this Honourable Court may deem fit and just to grant.**

2. Those prayers are premised on the Plaintiff’s contention that at all times material, she was the registered owner of the two parcels of land situated in Malindi the same having been transferred to her on 14<sup>th</sup> May, 2008 by way of assent as a beneficiary of the late Wilson Waititu Kiragu. At the time of the said transfer, the Plaintiff found out that the Defendant had erected some temporary structures thereon and upon enquiry the Defendant pleaded for time to enable him grant vacant possession thereof.

3. The Plaintiff avers that she agreed to the Defendant’s request on condition he would leave by December, 2008. The Defendant has since failed, refused and/or neglected to vacate the suit premises thereby depriving the Plaintiff of the quiet, peaceful use and enjoyment thereof.

4. Despite service of summons the Defendant neither entered appearance nor filed a Defence in response to the Plaintiff’s case. This matter accordingly proceeded by way of formal proof.

5. At the trial herein the Plaintiff testified that she is the registered proprietor of the two properties having inherited them in the year 2008 from her father the late Wilson Waititu Kiragu. The Plaintiff told the court that her father had purchased the properties from one Naushadhusein Mohamedali Jiwa in March, 1991.

6. The Plaintiff testified that sometime in 2008, she visited the suit properties and found that the Defendant had erected some temporary structures thereon. Upon enquiry, the Defendant conceded that he knew the properties belonged to the Plaintiff’s father and he pleaded to be given some time to move from the property. Out of charity, the Plaintiff gave him upto December, 2008 to move out.

7. The Plaintiff further told the court that sometime in February, 2011, the Defendant wrote a letter to her then deceased father proposing an arrangement whereby he would purchase the portion of land he was occupying and to pay the purchase price in instalments. The plaintiff did not respond to the request and the Defendant has since refused to vacate the land thereby depriving the Plaintiff of the quiet and peaceful use and enjoyment of her property.

8. I have considered the Plaintiff's pleadings, her oral testimony and the evidence adduced before the court. It is not in dispute that the Plaintiff is the registered proprietor of the suit properties.

9. It was the Plaintiff's case that the suit properties originally belonged to her father who is now deceased. Sometime in May, 2008 while she was in the process of transferring the properties to her name, she discovered that the Defendant had put up some temporary structures thereon. When the Plaintiff asked the Defendant why he was erecting structures on the land, the Defendant conceded that he was aware the properties belonged to the Plaintiff's father and pleaded for time to remove his structures, he has however failed to do so to-date.

10. Despite being given a chance to come and defend himself, the Defendant neither filed a Defence nor a response to the Plaintiff's claim. In those circumstances, this court can only make an inference that he had no answer to the Plaintiff's claim.

11. Upon perusal of the evidence presented before this court and in the absence of any evidence and/or testimony in the contrary, the Plaintiff's case remains uncontroverted and I did not find any reason to doubt the same. I am persuaded that the continued stay of the Defendant in the suit properties in the circumstances herein interferes with the Plaintiff's peaceful and quiet ownership, use, possession and occupation of the same.

12. Accordingly Judgment is hereby entered for the Plaintiff as against the Defendant as prayed in the Plaint.

13. The Plaintiff shall also have the costs of this suit.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2019.**

**J.O. OLOLA**

**JUDGE**