



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 244 OF 2017**

**JONES KAVIU WAMBUA.....PLAINTIFF**

**-VERSUS-**

**NDONYE MUSEMBI.....DEFENDANT**

**JUDGMENT**

1. Jones Kaviu Wambua who is the Plaintiff herein is a resident of Mbuvo in Makueni County. He is the proprietor of land parcels number Mbuvo/Kiangini/779, Mbuvo/Kiangini/1835 and Mbuvo/Kiangini/1836. He has sued Ndongye Musembi, the Defendant herein, for trespassing into his land parcel number Mbuvo/Kiangini/779.

2. By his plaint dated 14<sup>th</sup> March, 2013 and filed in court on the 18<sup>th</sup> March, 2013, the Plaintiff prays for judgment against the Defendant for:-

*a. An order for the Defendant to be evicted from the Plaintiffs Land Parcel Number MBUVO/KIANGINI/779 and demolition of all illegal structures therein.*

*b. A permanent order of injunction against the Defendant, his sons, servants, agents or any other person acting through him or under his instructions from entering into, remaining therein, farming, cultivating, grazing, causing wanton destruction or in any other way from interfering with Plaintiff's Land Parcel Number MBUVO/KIANGINI/1835 and MBUVO/KIANGINI/1836.*

*c. Costs of the suit.*

*d. Any other or further relief as this Honourable Court may deem fit and just to grant.*

3. The Defendant did not enter appearance nor did he file his defence after he was served with summons on the 22<sup>nd</sup> March, 2013. As such, this matter proceeded by way of formal proof.

4. Hearing of the Plaintiff's suit commenced on the 05<sup>th</sup> December, 2017 whereby he adopted his undated witness statement filed in court on the 18<sup>th</sup> March, 2013 as his evidence.

5. His evidence was that while he was serving prison sentence, the Defendant trespassed into his land parcel number Mbuvo/Kiangini/779. He added he had not allowed the Defendant to enter into the said land. He revealed that he has on several occasions asked the accused to vacate the suit land but the Defendant has declined to do so.

6. It was also the Plaintiff's evidence that he invited the surveyor to visit the suit land. He said that in his report {*P.Exhibit No.2(a)*} and sketch plan {*P.Exhibit No.2(b)*}, the surveyor found the Defendant to have trespassed into the Plaintiff's land. The Plaintiff produced three copies of certificates of search as *P.Exhibit No.1(a)*, *(b)* and *(c)* respectively. The three certificates of search are for land parcel number Mbuvo/Kiangini/779, Mbuvo/Kiangini/1835 and Mbuvo/Kiangini/1836.

7. The Plaintiff's Counsel in his written submissions urged the court to find that the Plaintiff has proved his case on a balance of probabilities and therefore proceed to issue the orders sought. The Counsel relies on the case of **William Peter Mayaka vs Richard Kipkoris Mutai and 3 others in Nakuru HCCC NO.246 of 2004**.

8. From the above, I am of the view that the issues for determination are:-

***a. Whether or not Plaintiff is the owner of land parcel number Mbuvo/Kiangini/779.***

**b. Whether or not the Defendant has trespassed into the said land parcel number Mbuvo Kiangini/779.**

**c. Whether or not an order of permanent injunction against the Defendants, is sons, servants, agents or any other person acting through him.**

**d. Whether or not he should be awarded costs.**

9. On the first issue, the Plaintiff produced certificate of official search for land parcel number Mbuvo/Kiangini/779 as *P.Exhibit No.1(a)*. The proprietor is said to be Jones Kaviu Wambua who is the Plaintiff herein. In his list of documents dated 14<sup>th</sup> March 2013 and filed in court on 18<sup>th</sup> March, 2013, the Plaintiff annexed a copy of title deed number Mbuvo/Kiangini/779 whose registry map is sheet number 11. It shows the Plaintiff as the registered absolute proprietor of the land in question. As such I will answer issue number (a) in the positive. As for issue number (b), the Plaintiff's evidence is supported by the surveyor's report {*P.Exhibit No.2(a)*}.

10. Given my holding in issue numbers (a) and (b), I will answer issue number (c) in the positive. As for the issue number (d), the Plaintiff produced a copy of demand letter to the Defendant dated 14<sup>th</sup> November, 2013 as *P.Exhibit No.3* and as such I hold that he is entitled to costs.

11. From the foregoing, I agree with the Plaintiff's Counsel that the Plaintiff has on a balance of probabilities satisfied this court that he has a cause of action against the Defendant. **I, therefore proceed to enter judgment in his favour and against the Defendant in terms of prayers (a), (b) and (c). It is so ordered.**

**Signed, Dated and Delivered on this 29<sup>th</sup> Day of January, 2018.**

**MBOGO C.G.,**

**JUDGE.**

**In the presence of:**

**Mr. Mutune for the Plaintiff – Absent**

**Mr. Kwemboi – Court Assistant**

**MBOGO C.G.,**

**JUDGE**