



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MAKUENI**

**ELC CASE NO.150 OF 2017**

**NJERI MUIGAI and KAMAU MUIGAI (Suing as the**

**legal representatives of the estate of the late**

**MUIGAI KAMAU – deceased).....PLAINTIFFS**

**VERSUS**

**SAMUEL LEBON AMBROSE.....DEFENDANT**

**JUDGMENT**

1. By his plaint dated **23<sup>rd</sup> November, 2016**, and filed in court on even date, the plaintiff prays for judgment against the defendant for:-

*a) A permanent injunction restraining the defendant and his servants, through him from disposing of or transferring **plot No.91 Emali Trading Centre** to any person and from interfering in any way or doing any other prejudicial act thereon.*

*b) A declaration that **plot No.91 Emali Trading Centre** is an asset of the deceased under administration by the plaintiffs.*

*c) Costs of this suit plus interest at court rates.*

2. The defendant did not enter appearance nor did he file his defence after he was served with summons on the **05<sup>th</sup> December, 2016**. Trial of this suit, therefore, proceeded byway of formal proof.

3. On the **08<sup>th</sup> November, 2017**, the plaintiff adopted his witness statement filed in court on the **23<sup>rd</sup> November, 2016** as his evidence.

4. His evidence was that **plot number 91 Residential at Emali** belongs to his late father, one Muigai Kamau. He produced the certificate of confirmation of grant as **P.Exhibit No.3**. He said that they have been paying rates for the plot in question and he produced copies of receipts for payment of rates as **P.Exhibt Nos. 4(a) to (c)** respectively. Further the plaintiff produced a rates clearance certificate as **P.Exhibit No.5**.

5. The plaintiff told the court that Samuel Lebon Ambrose who is the defendant herein has trespassed into the said **plot number Emali 91 Residential** and that the defendant has refused to grant vacant

possession.

6. In his written submissions, the plaintiff's counsel correctly submitted that **plot number 91 residential Emali Trading Centre** vested in the administrators of the estate of MuigaiKamau. The plaintiff is one of the administrators as can be seen from the certificate of confirmation of grant (**P.Exhibit No.3**).

7. The plaintiff's counsel went on to submit that the defendant has no colour of right over the suit property and he ought to be restrained from further interfering in any way with the said property. The counsel relied on the case of **Mahamed Riaz Shoukat & Another vs Yasin Abi Bakar Argwings Kodhek and 3 others [2017]eKLR**.

8. On the 23<sup>rd</sup> October, 2017, the plaintiff filed statement of issues dated 23<sup>rd</sup> October, 2017. The issues were:-

- a) *Whether or not **plot No.91 Emali Trading Centre** legally belongs to the estate of the late MuigaiKamau;*
- b) *Whether or not the defendant has encroached into **plot No.91 Emali Trading Centre**;*
- c) *Whether the defendant's intended actions of subdivision and disposal of **plot No.91 Emali Trading Centre** are lawful;*
- d) *Whether the defendant has any colour of right over **plot No.91 Emali Trading Centre**;*
- e) *Whether demand and notice of intention to sue was served upon the defendants?*

9. Having read the evidence on record and the submissions filed, my finding is that as regards issue number 1, I have no doubt in my mind that plot number 91 Residential Emali Trading Centre belongs to the estate of MuigaiKamau of which the plaintiff is a co-administrator. Regarding issue number 2, there is evidence to show that the defendant has trespassed into plot number 91 Residential Emali Trading Centre belonging to the Estate of MuigaiKamau. On issue number 3, no evidence was adduced in support of the same. This is despite the averment in paragraph 3 and 4 of the plaint. Regarding issue number 4, there is nothing to show that the defendant has colour of right over the suit property. As for issue number 5, I will answer the same in the positive.

10. Arising from the foregoing, it is my finding that the plaintiff has on a balance of probabilities satisfied this court that he has a cause of action against the defendant. In the circumstances, I hereby proceed to enter judgment for the plaintiff and against the defendant in terms of prayers (a), (b) and (c) of the plaint.

**Signed, Dated and Delivered on this 25<sup>th</sup> Day of January, 2018.**

**MBOGO C.G.,**

**JUDGE.**

**In the presence of;**

**Mr. Hassan holding brief for Ms. Mbuvi for the plaintiff – present**

**Mr. Kwemboi – Court Assistant**

**MBOGO C.G.,**

**JUDGE.**