



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

**AT KAKAMEGA**

**ELEC NO. 107 OF 2016**

**LEONARD PETER AMALIA.....PLAINTIFF**

**VERSUS**

**SABINA MUSEBE MUGANDA**

**LENA NAKUMICHA MUGANDA.....DEFENDANTS**

**LOISE MUGANDA**

**JUDGEMENT**

The plaintiff's case is that, at all material times herein referred the plaintiff is the duly registered proprietor of the whole of that parcel better known N/KABRAS/KILIBOTI/526 measuring 3.4 H.A. The defendants jointly and/or severally without any colour of right trespassed into the said parcel of land and erected structures thereon and have continued to stay thereon without the plaintiff's consent. Despite demand and notice of intention to sue having been made the defendants have refused, failed and/or declined to vacate the said land and still persists in such refusal failure and/or decline. The plaintiff prays for judgment against the defendant jointly and severally for an eviction order and costs of the suit.

PW1 the plaintiff testified that, he is a resident of Rosterman in Kakamega. Sometimes in 1987 he happened to pass via Kakamega Post office where a public auction was taking place. He bid for the parcel of land better known as N/KABRAS/KILIBOTI/526 measuring 3.4 HA which land was the subject of the auction. He happened to be the highest bidder at Ksh. 20,000/= and he paid for the said land in full. The title deed was processed and he obtained the same on the 17<sup>th</sup> February, 1988. There are now some people who have encroached on the said land and have refused to move out claiming ownership over the same. He has on numerous occasions tried to evict them using the provincial Administration without success. He therefore wishes to have the said trespassers who are the defendants evicted using the court. The defendants entered appearance but failed to file a defence or attend court during the hearing.

It is not in dispute that the plaintiff is the registered proprietor of LR. No. N/KABRAS/KILIBOTI/526 and he has produced a copy of the title deed PEx1. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

*“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”*

Section 26 (1) of the Land Registration Act states as follows:

*“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –*

*a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or*

*b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”*

This court in considering this matter referred to the case of **Elijah Makeri Nyangw’ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR** where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. **Hon Justice Munyao Sila** in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

***“.....the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme”.***

PW1 the plaintiff testified that, he bid for the parcel of land better known as N/KABRAS/KILIBOTI/526 measuring 3.4 HA which land was the subject of an auction. He happened to be the highest bidder at Ksh. 20,000/= and he paid for the said land in full. The title deed was processed and he obtained the same on the 17<sup>th</sup> February, 1988. The defendants have offered no defence and they did not attend the hearing of the case despite being served. I find that, the plaintiff has proved his case on a balance of probabilities. The certificate of title issued by the Registrar upon registration (PEx1) has been taken by this court as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner and the title of that proprietor has not been challenged as evidence of fraud or misrepresentation to which the person is proved to be a party or evidence that the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme has not been adduced. I therefore grant the following orders;

1. The defendants herein are given 3 (three) months from today’s date to vacate the suit parcel better known N/KABRAS/KILIBOTI/526 measuring 3.4 H.A and in default eviction order to issue forthwith.

2. Costs of this suit to the plaintiff.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 23<sup>RD</sup> DAY OF JANUARY 2018.**

**N.A. MATHEKA**

**JUDGE**