

REPUBLIC OF KENYA

THE ENVIRONMENT & LAND COURT

AT GARISSA

ELC CASE NO. 49 OF 2017

ANTONIO MUSYOKA DAVID.....PLAINTIFF

VERSUS

MUMBI KUSUANIA.....DEFENDANT

JUDGEMENT

The plaintiff Antonio Musyoka David has instituted this suit against Mumbi Kusuania, the defendant herein for vacant possession and mesue profits at the rate of Kshs.5000/= per month with effect from 2010 to date. In a plaint dated 4th July 2017, the defendant avers that he is the registered owner of all that parcel of land known as L.R NO. Mwingi/Mwingi/1729 measuring approximately 0.02 Ha. The plaintiff further avers that the defendant has since the year 2010 without any colour of right or justification trespassed into the said land and has continued to occupy the same without his consent.

When the summons and suit papers were served upon the defendant, she failed to Enter Appearance or file defence. Upon being satisfied that the defendant was indeed served with summons, plaint and the verifying affidavit, the court decided the suit to proceed Ex-parte.

The plaintiff gave sworn testimony and stated that his full name is David Mulandi and Antonio Musyoka David is his son. He produced a power of Attorney dated 6th July, 2012 giving him power and authority to commence, prosecute defend any action or actions suit or suits at law or equity in any of the courts of Kenya on his behalf. The witness also produced his witness statement which was adopted in his evidence. He also produced a list of documents dated 6th March 2017. That list of documents is a copy of title deed for the suit property Land Reference Number Mwingi/Mwingi/1729, a demand letter dated 5/8/14, an application for consent of Land Control Board and a letter of consent. The list also contains a police abstract from Eldoret Police Station dated 18th March, 2015. The testimony of the plaintiff and the documents produced in evidence are not challenged as no defence was filed by the defendant.

The certificate of title produced in evidence is a prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner except on grounds of fraud or misrepresentation. The plaintiff has stated in his suit papers that the defendant trespassed into the suit property sometime in the year 2010.

In the absence of any explanation or any legal right into the plaintiffs land, I find that the plaintiff has proved his claim against the defendant on a balance of probabilities. In the upshot, I hereby enter judgement for the plaintiff against the defendant in the following terms:-

- 1. The defendant be and is hereby evicted from the plaintiffs land Reference Number MWINGI/MWINGI/1729.**
- 2. That the Officer Commanding Mwingi Police Station (OCS) to ensure compliance of this order.**
- 3. The costs of the suit to be borne by the defendant.**

Read and delivered in the open court this 17th day of January, 2018

Hon. E.C Cherono (Mr.)

ELC Judge

In the presence of

1. Ijabo – Court clerk
2. Plaintiff/Advocate (Absent)
3. Defendant/Advocate (absent)