



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.84 OF 2016

**GOOD COUNTRY ENTERPRISES LTD ..... PLAINTIFF**

**VERSUS**

**GEORGE OGONY OMIRE ..... DEFENDANT**

**JUDGMENT**

1. **Good Country Enterprises Limited**, the Plaintiff, filed this suit against **George Ogony Omire**, the Defendant, through the plaint dated 7<sup>th</sup> April 2016 seeking for eviction from **Siaya/Omia Diere/2829**, removal of the caution filed against the title, mesne profit for wrongful occupation of the land, costs and interests. The Plaintiff aver that it is the registered proprietor of the suit land, and that the Defendant illegally and unlawfully occupied a part of the property and erected some houses. That the Defendant filed a caution on the land title on the 23<sup>rd</sup> October 2015 and has declined to vacate after being asked to.

2. The Defendant was served with the suit papers as confirmed by the process server named Boniface Ouma Ondiegi, vide the affidavit of service sworn on the 29<sup>th</sup> April 2016. That the Defendant neither entered appearance nor filed any defence.

3. That in support of the Plaintiff's case, John Calistus Obel, testified as PW2. He told the court that after the land consolidation and adjudication exercise, he was registered as the first proprietor of the suit land on the 27<sup>th</sup> August 1996. That later he gave the land to his two daughters, namely **Elizabeth Kicia Obel** and **Anne Atieno Josiah**, who registered it in the name of the Plaintiff, which is their company and in which they are directors, on the 16<sup>th</sup> March 2009. That Elizabeth Kicia Obel and Anne Atieno Josiah testified as PW1 and PW4 respectively. It is the Plaintiff's case that the Defendant, who is a distant relative to PW1 and PW4, moved onto the suit land in 2012 and later lodged a caution claiming beneficial interest on the 23<sup>rd</sup> October 2015. That the caution has since been removed by the Land Registrar on 10<sup>th</sup> October 2016 as confirmed by the copy of the green card.

4. That following the closure of the Plaintiff's witnesses testimonies, their learned counsel filed written submissions dated 7<sup>th</sup> August 2017.

5. The following are the issues for the court's determination;

- a) Whether the Defendant has any legally recognized claim or interest over the suit land entitling him to use part of the suit land.
- b) Whether the prayers sought should be granted.

6. The court has after considering the pleadings filed, the oral and documentary evidence presented by the witnesses called by the Plaintiff, the written submissions by counsel for the Plaintiff come to the following conclusion.

a) That the Plaintiff is the legally and procedurally registered proprietor of land parcel **Siaya/Omia Diere/2829** since 16<sup>th</sup> March 2009 and therefore entitled to peaceful use and occupation of the land in accordance with **Section 24 and 25 of the Land Registration Act No.3 of 2012**.

b) That the Defendant unlawfully entered onto the suit land in 2012 without the authority of the Plaintiff and erected houses (structures) on it. That act by the Defendant amounted to trespass to the suit land and as the Plaintiff is the absolute and indefeasible owner of the land by virtue of being the registered proprietor, as provided for under **Section 26 of the Land Registration Act**, it is entitled to the prayer of eviction against the defendant.

c) The Plaintiff has prayed for mesne profits based on Kshs.140,000/ for each of the five years from 2012 making a total of Ksh.700,000/-. The calculation is derived from an estimate of 40 bags of maize, each at Sh.3500/= that they would have got from the two acres occupied by the Defendant per year. That as there is no basis of coming to the 40 bags per year or the price per bag of

Sh.3500/=, the court awards the Plaintiff Ksh.500,000/= for mesne profits for the entire period the Defendant has been in occupation of the two acres.

7. The foregoing shows that the Plaintiff has proved its case on a balance of probability against the Defendant. That the court therefore enters judgment for the Plaintiff against the Defendant and issues the following orders;

a) That the Defendant do vacate from **Siaya/ Omia Diere/2829** by removing himself, his agents and all his personal structures and effects in ninety (90) days and in default eviction order to issue.

b) That the Defendant do pay the Plaintiff Ksh.500,000/= (Five hundred thousand) as mesne profits for the two acre portion of the suit land he has used since 2012.

c) The Defendant do pay the Plaintiff costs of the suit and interest.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 17<sup>TH</sup> DAY OF JANUARY 2018**

In presence of;

Plaintiff        Absent

Defendant       Absent

Counsel        Mr. Kirenga for Plaintiff

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**17/1/2018**

17/1/2018S.M. Kibunja Judge

Oyugi/Joane Court assistant

Parties absent

Mr. Kirenga for the Plaintiff

Court: Judgment dated and delivered in open court in the presence of Mr. Kerenga advocate for the Plaintiff.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**17/1/2018**