

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 204 OF 2016

BOSCO NTHENGE NZIOKI.....PLAINTIFF

VERSUS

WAYUA MUEMA.....DEFENDANT

JUDGMENT

1. In the Plaint dated 9th November, 2016, the Plaintiff averred that at all material times, he was the lawful and legal owner of Plot No. 757, Katelembo Athiani Muputi Farming and Ranching Co-operative Society Limited (*the Society*) which he bought from Peter Kivanga Mutiso.
2. The Plaintiff averred that the Defendant has now encroached on the said land and has erected a temporary structure on the land.
3. In his prayers, the Plaintiff is seeking for an order of eviction to issue as against the Defendant and for a permanent injunction restraining the Defendant from entering on the suit land. The Plaintiff is seeking for general damages for trespass.
4. Although the Defendant was served with the Plaint and the Summons to Enter Appearance, he neither entered appearance nor filed a Defence. The matter proceeded for hearing in the absence of the Defendant on 21st September, 2017.
5. The Plaintiff, PW1, informed the court that he purchased plot number 757 measuring ½ an acre from Peter Kivanga Mutiso; that on visiting the land, he found the Defendant had encroached on the land and erected a temporary structure and that the Defendant has refused to vacate the land.
6. The Plaintiff produced in evidence the membership card of Peter Kivanga and the Sale Agreement of 25th September, 2015. The said Agreement shows that the Plaintiff purchased the suit land for Kshs. 600,000 and paid the entire purchase.
7. Considering that the Defendant has not controverted the Plaintiff's evidence that the suit land initially belonged to Peter Kivanga, who was a member of Katelembo Athiani Muputi Farming and Ranching Co-operative Society Limited, which land the Plaintiff purchased, I find that the Plaintiff has proved his claim on a balance of probabilities. I therefore allow the Plaint as follows:

a. An order of eviction of the Defendant from Plot No. 759-Katelembo Athiani Muputi Farming and Ranching Co-operative Society Limited be and is hereby issued.

b. An order of permanent injunction be and is hereby issued restraining the Defendant by herself, servants and or agents from entering and interfering with the Plaintiff's Plot No. 757-Katelembo.

c. The Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF FEBRUARY, 2018.

O.A. ANGOTE

JUDGE