



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MACHAKOS**  
**ELC. CASE NO. 107 OF 2017**

ALEXANDER KIMUYU NDUVA.....PLAINTIFF

VERSUS

MICHAEL KAVITA NGEI.....1<sup>ST</sup> DEFENDANT

ANNASTACIA KALUKI NGEI.....2<sup>ND</sup> DEFENDANT

**RULING**

1. In the Notice of Motion dated 19<sup>th</sup> April, 2017, the Plaintiff is seeking for the following orders:

***a. That this Honourable Court be pleased to enter Judgment against the Defendants jointly and severally on admission as prayed in the Plaintiff.***

***b. That the costs of this suit and this Application be borne by the Defendants.***

2. The Application is premised on the grounds that the Defendants have admitted the Plaintiff's claim in their Defence and that there is nothing left for trial and Judgment should be entered as prayed.

3. In the Affidavit, the Plaintiff has deponed that in their Defence filed on 11<sup>th</sup> April, 2017, the Defendants have admitted the Plaintiff's claim by stating that they have vacated the suit land.

4. Although the Defendants were served with the Application, the Defendants did not file a response.

5. In the submissions, the Plaintiff's advocate submitted that the Plaintiff sued the Defendants seeking for an order of permanent injunction and declaratory orders that parcel number Matungulu/Kawethei/4667 is rightfully owned by the Plaintiff; that the Plaintiff is the registered owner of the land and that the Defendants admitted the Plaintiff's claim in their Defence.

6. In the Plaintiff's Complaint, the Plaintiff averred that he is the owner of parcel of land known as Matungulu/Kawethei/4667 measuring 0.3Ha (*the suit land*); that the Defendants invaded the suit land on 14<sup>th</sup> July, 2014 and that the Defendants should be permanently restrained from trespassing on the land.

7. In their Defence, the Defendants averred that they entered into an agreement dated 14<sup>th</sup> July, 2014 with the Plaintiff's wife for the purchase of the suit land; that they paid the Plaintiff's wife Kshs. 90,000 for the land and that they took possession of the land as innocent purchasers for value.

8. The Defendants further averred that the Plaintiff's wife and his son fraudulently misrepresented crucial facts over ownership of the suit land and *“that the true and legal ownership of the suit property having been known to the Defendants, the Defendants do not require the courts orders prayed against them but have voluntarily left vacant possession the Plaintiff's suit property.”*

9. The Defendants have admitted in their Defence that they have voluntarily given vacant possession.

10. The Defendants have therefore unequivocally admitted the Plaintiff's claim. For those reasons, Judgment on admission should be entered.

11. I therefore allow the Application dated 19<sup>th</sup> April, 2017 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2<sup>ND</sup> DAY OF MARCH, 2018.**

**O.A. ANGOTE**

**JUDGE**