



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 308 OF 2017

BHAVIN ASHWIN GUDKA.....PLAINTIFF

-VERSUS-

DANIEL OLE KANASA.....DEFENDANT

JUDGEMENT

The Plaintiff commenced the suit herein by a way of a Plaint dated 7th September, 2016. The Plaintiff sought for orders of a declaration that he is the registered owner of **LR NO.TRANS MARA/MOITA/111**, an order of eviction against the Defendant and removal of a caution registered by the Defendant, damage for trespass and a permanent injunction against the Defendant for trespassing on the said land.

Upon service of the summons, the Defendant did not enter appearance or file a defence in the matter and therefore the suit proceeded in the absence of the Defendant.

The Plaintiff averred that he is the registered owner of the suit land measuring approximately 10.49 hectares and that he purchased the same from Nuuya Ole Kuyaa and that the Defendant had on 19th March, 2015 caused a caution to be registered over the land claiming to have an interest as a licensee and further went and trespassed and entered the land and commenced cultivating the same and that the Defendant's actions have deprived him of his absolute rights.

When the suit came up for hearing the Plaintiff testified through one Omega Jacob Oboi who had a Power of Attorney and told the court that he is the property Manager of the plaintiff. During his testimony he told the court how the Plaintiff acquired the suit land and produced a sale agreement, a certificate of title to the land and a certificate of official search showing the plaintiff as the registered owner of the land and a caution registered over the land by the Defendants.

I have considered the pleading filed, the testimony of the witness and the evidence before the Plaintiff and the testimony remains uncontroverted and unchallenged am satisfied that the plaintiff has proved his case on a balance of probability that the Defendant has committed an act of trespass, the intrusion of the Plaintiff's land without consent and authority constitute all the ingredients to proof the tort of trespass.

The Plaintiff produced in evidence a certificate of title to the land registered in his names and a certificate of official search to further buttress the same.

It is my finding therefore that the Plaintiff has proved that he is the owner of the suit land and the

Defendant has trespassed on the same. The Plaintiff is thus entitled to the prayers sought in the plaint.

On the issue of Damage for trespass, the Plaintiff did not produce evidence to help the court assess the issues of damages for trespass.

In view of the above I do enter judgment for the Plaintiff against the defendant in the following terms:-

- 1. A declaration do hereby issue that the Plaintiff is the registered owner of LR. NO. TRANS MARA/MOITA/111.**
- 2. An order of removal of the caution registered by the Defendant on the land on the 19th March, 2015.**
- 3. The Defendant to voluntarily move out of the suit land within 90 days of this judgment in default an order of eviction do issue which must be carried out in strict compliance with the provisions of section 152(a),(b)(i) of the Land Act (Revised 2016)**
- 4. Costs of the suit.**

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **2nd** day of **March , 2018**

Mohammed Noor Kullow

Judge

In the presence of:-

Mr Langat holding brief for Ogutu for the Plaintiff

N/A for the Defendant

Cc:Chuma

Mohammed Noor Kullow

Judge

2/3/18