



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**ELC NO. 152 OF 2017**

**FORMERLY MACHAKOS ELC NO. 221 OF 2016**

**ELIZABETH NDULU MATHUVA.....PLAINTIFF**

**VERSUS**

**JOSEPH MBIU MUTHIANI.....DEFENDANT**

**JUDGMENT**

1. The plaintiff is a farmer and a resident of Thomeandu Village, Kikoko location. She is also the registered owner of land parcel number Makueni Kalongo /2099.

2. She accuses the defendant of having trespassed into the said land parcel number Makueni/Kalongo/2099.

3. By her plaint dated 8<sup>th</sup> December, 2016 and filed in court on even date, the plaintiff prays for judgment for;

**1. An order of eviction of defendant from parcel number Makueni/Kalongo/2099**

**2. Cost of the suit**

4. The matter proceeded as undefended suit after the defendant who entered on the 22<sup>nd</sup> December, 2016 through Nathan Mbullo and Associates Advocates failed to file defence within the prescribed period.

5. In her evidence in court, the plaintiff accused the defendant who is the nephew of her late husband of having taken over her farm. She went on to say that the defendant farms on the land in question. She said that the defendant has cut down trees on her land.

6. The plaintiff produced a copy of title deed, demand letter issue to the defendant as Pex No. 1 and 4 respectively. She also produced a copy of grant of letters of administration, a copy of confirmation of the grant and a copy of certificate of death as PexNos. 2, 3 and 5.

7. Although the plaintiff's counsel had indicated that he was going to file submissions, he did not do so.

8. Nevertheless, a perusal of the evidence and the exhibits produced by the plaintiff clearly shows that she is the registered owner of the said land parcel number Makueni/Kalongo/2099. There is also evidence to show that the defendant has indeed invaded her farm and proceeded to cut down her trees.

9. Arising from the above, my finding is that the plaintiff has on a balance of probabilities satisfied this court that she has a cause of action against the defendant. In the circumstances, I hereby proceed to enter judgment for her and against the defendant in term of prayers 1 and 2 of her plaint. For good measure, I direct that prayer 1 to be carried out in accordance with section 152E of the Land Act no. 6 of 2012 as amended by the Land Law Amendments of 2016. It is so ordered.

Signed, Dated and Delivered at **Makueni** this **17<sup>th</sup>** day of **April, 2018**

**MBOGO C.G**

**JUDGE**

**In the presence of;**

1. Mr. Tamata for plaintiff

2. Mr. Kwemboi Court Assistant

**No appearance for the defendant**

**MBOGO C.G, JUDGE**

**17/4/2018**