



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC. CASE NO. 32 OF 2016**

**WILSON DANIEL OGOLA.....PLAINTIFF**

**VERSUS**

**MOURICE OUMA AGWEDO.....DEFENDANT**

**JUDGMENT**

1. Wilson Daniel Ogola, the Plaintiff, filed this suit against Mourice Ouma Agwedo, the Defendant, through the plaint filed on the 28<sup>th</sup> February 2016 seeking for an order stopping him from interfering with land parcel Kisumu/Kogony/5656 and costs. He avers that he is the registered proprietor of the said land measuring 0.11 hectares. That the Defendant has trespassed onto the land, ploughed and deposited construction materials without his consent or authority. The Plaintiff testified as PW1. He produced a copy of the title deed, certificate of official search and certified copy of Kisumu CM C.C. No. 487 of 2011 as exhibit and prayed for injunction, eviction and costs.

2. The Defendant was served with the suit papers but did not enter appearance, file defence or participate in the hearing in any way.

3. The issues for determination are as follows;

- a) Whether the Plaintiff is the legal owner of land parcel Kisumu/Kogony/5656.**
- b) Whether the Defendant has any legal rights to use or occupy the said land.**
- c) Who pays the costs.**

4. The Court has carefully considered the pleadings filed, the oral and documentary evidence adduced by the Plaintiff and come to the following conclusions.

- a) That the copy of the title deed dated 30<sup>th</sup> April 2013 and certificate of official search for Kisumu/Kogony/5656, the suit land, produced by the Plaintiff as exhibits 1 and 2 respectively, confirms the Plaintiff's claim that the said land is registered in his name.
- b) That in accordance with **Section 26 (1) of the Land Registration Act No. 3 of 2012**, the Court takes the Plaintiff as the absolute and indefeasible owner of the said land. There is no evidence of any challenge to his title to the suit land.
- c) That as the registered proprietor of the suit land, the Plaintiff is entitled to the rights and privileges of a registered proprietor which he cannot fully enjoy when the Defendant ploughs and or places building materials on the land without the Plaintiff's consent and authority.
- d) That as the Defendant did not challenge or controvert the Plaintiff's pleadings and evidence that he has trespassed onto the land and committed the acts of trespass as pleaded, the Court finds that the Plaintiff has proved his case in accordance with the law.

5. The Court therefore enters Judgment for the Plaintiff against the Defendant in the following terms;

- a) That the Defendant do vacate from the Plaintiff's land, Kisumu/Kogony/5656, in ninety (90) days from the date of service of a copy of this order upon him, and in default eviction order to issue.**
- b) That upon the Defendant giving the Plaintiff vacant possession or being evicted, he be permanently restrained from interfering with the Plaintiff's use of the said land.**

**c) The Defendant do pay the Plaintiff costs of this suit.**

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**

DATED AND DELIVERED THIS 30<sup>TH</sup> DAY OF MAY 2018

**In the presence of:**

Plaintiff Present

Defendant Absent

Counsel N/A

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**