



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**MISC APPLICATION NO. 36 OF 2017**

**ABDUL KWEYU OGUTU.....APPLICANT**

**VERSUS**

**JARED SAKWA NGOYANI.....RESPONDENT**

**RULING**

This application seeks the following orders:

1. That service of this order be in the first instance.
- 2 (a) That the respondent be and is hereby directed to surrender back to me the applicant the one(1) acre parcel of land I, the applicant bought from him in December 2008.
- (b) That applicant be and is hereby directed to pay me the applicant retribution for denying me access and usage of the aforesaid one acre parcel of land.
3. That the cost of this suit be determined.

The applicant stated that, he bought one acre parcel of land from the respondent herein one Jared Sakwa Ngoyani at a cost of Kshs.125,000/= (attached is a copy of the land sale agreement labeled as annexure 1). That the afforested acre was a sub division of LP East Wanga /Isongo/365. That with the leave of the afforested vendor, a surveyor demarcated the acre from LP East Wanga/Isongo/365 at his expense. That with the leave of the vendor, he took occupation of the one acre parcel of land in 2008 on which he cultivated first maize and beans and then sugarcane. That he cultivated the parcel until 2014 when the respondent without any reasonable cause took possession of it. That he reported the irregular invasion on his parcel of land to the local administration and the police who advised him to seek redress in this honourable court. That the irregular take-over of the said one acre parcel of land has prejudiced his very existence given that he is a peasant who relies on it for his economic survival. That the respondent shall not be prejudiced if the sought orders are granted. That the application is made in good faith and same has overwhelming chances of success. The respondent was served but failed to attend court or file any papers in opposition.

This court has considered the applicant's submissions. The application is based on the annexures thereto and on the following grounds; that the applicant bought one acre parcel of land from the respondent therein in December 2008 at cost of kshs.125,000. (sale agreement is attached) That with the leave of the respondent herein, the one acre was demarcated by a surveyor at his own cost he took occupation of the one acre parcel of land and cultivated maize and beans and later sugarcane. That the respondent herein later changed his mind in 2014 and took occupation of the said parcel of land without any justifiable cause. That he reported the matter to the local administration and the police who directed him to seek redress in this honourable court. That the respondent and his family shall not be prejudiced if the orders sought are granted. That the application is made in good faith and same has an overwhelming chance of success. This application is not opposed. I find this application is merited and I grant the following orders;

1. That the respondent be and is hereby directed to surrender back to the applicant the one(1) acre parcel of land
2. That the cost of this application to the applicant.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 16<sup>TH</sup> DAY OF MAY 2018.**

**N.A. MATHEKA**

**JUDGE**