



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 235 OF 2017**

**JOSEPH NYAKUNDI ORINA.....PLAINTIFF**

**VERSUS**

**JOSEPH AMBUKA.....DEFENDANT**

**JUDGMENT**

***(Suit for possession of certain land; plaintiff having purchased the said land from the previous proprietor; defendant trespassing and possessing the same; evidence that plaintiff purchased the suit land from previous proprietor and recognized as the rate payer; no evidence tendered by the defendant; plaintiff's evidence uncontroverted; judgment entered for the plaintiff; orders of eviction and permanent injunction issued against the defendant).***

1. This suit was commenced by way of a plaint which was filed on 6 June 2017. In his plaint, the plaintiff has pleaded that he is the owner of the land parcel identified as Nakuru Municipality Block 13L (Bondeni) (unsurveyed), having purchased it from its previous proprietor on 10 February 2014. He has claimed in his suit that the defendant has invaded and trespassed the said land, and in his suit, the plaintiff has asked for orders of eviction, mesne profits, and a permanent injunction, against the defendant.

2. Despite being served, the defendant did not enter appearance, and neither did he attend court for the hearing of the matter despite being duly served.

3. In his evidence, the plaintiff testified that the land was initially allotted to one Benard Wanjohi, who sold it to Miriam Wanjiku Gichuki, who in turn sold it to the plaintiff in the year 2014. The allotment letter was produced as an exhibit. Upon purchase, a clearance certificate was applied for, which was granted and the vendor also handed to him all rent payment receipts. The plaintiff then applied for a survey of the land and paid the requisite fees. When he went to take possession, he found that the defendant had fenced the land and had developed a temporary structure. He reported to the Lands Minister of Nakuru County and the defendant was summoned but he failed to appear. He testified that he has tried to talk to the defendant but is unable to do so since he (the defendant) is wild.

4. PW-2 was Miriam Wanjiku Gichuki, the person who sold the suit land to the plaintiff. She testified that she had earlier in the year 2004 purchased the suit land from the original allottee. At the time she purchased it, the land was vacant, but later the defendant entered it. They tried to remove him in vain.

5. With the above evidence, the plaintiff closed his case and counsel filed written submissions which I have considered.

6. The land in issue is an unsurveyed property and does not therefore have a registered parcel number. I have however seen from the allotment letter dated 21 April 1999, that this land was allotted by the now defunct Municipal Council of Nakuru, to one Benard Wanjohi. I have also seen that the said Benard Wanjohi, through the sale agreement of 27 January 2004, transferred his interest to Miriam Wairimu Gichuki. The plaintiff thereafter purchased the suit land from the said Miriam, through the sale agreement of 10 February 2014, which was also produced as an exhibit. It is apparent therefore that the interest in the suit property has properly been transferred to the plaintiff from the initial allottee. I have seen the exhibited receipts for payment of land rent and land rates in the name of Miriam Wairimu, and from these, it is clear that the recognized rate payer and tenant, was at the time Miriam Wairimu. The plaintiff produced a Clearance Certificate from the County Government of Nakuru, permitting the transfer of the interest of Miriam Wairimu to the plaintiff. From these documents, I have no doubt that the rightful proprietor of the suit land is therefore the plaintiff. As proprietor, he is entitled to exclusive possession and enjoyment of the suit land. The defendant has not presented himself to court to demonstrate any rights over the suit land and I therefore have no reason not to grant the plaintiff the prayers of eviction and permanent injunction against the defendant. In his suit, the plaintiff also claimed mesne profits but he did not lead any evidence to prove what he has actually lost by the continued possession of the defendant of the suit land. I will not therefore make any award under this head. He however deserves costs of this suit.

7. I now make the following final orders :-

**(i) That I hereby declare that the plaintiff is the rightful proprietor of the land identified as Nakuru Municipality Block 13L (Bondeni) (unsurveyed).**

**(ii) That I hereby declare that the defendant is a trespasser in the land identified as Nakuru Municipality Block 13L (Bondeni) (unsurveyed) and I hereby order him to vacate the suit land within 30 days of him being served with this judgment and/or decree, and in default, an order for his eviction be issued and be executed.**

**(iii) That there is hereby issued a permanent injunction restraining the defendant from entering, possessing, using, or in any other way interfering with the plaintiff's use and right to possess the land identified as Nakuru Municipality Block 13L (Bondeni) (unsurveyed).**

**(iv) That the plaintiff shall have the costs of this suit.**

8. Judgment accordingly.

**Dated, signed and delivered in open court at Nakuru this 16<sup>th</sup> day of May 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of: -**

Mr. Kairu holding brief for Mr. Matiri for the plaintiff.

No appearance on the part of the defendant.

Court Assistant :Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**