



**REPUBLIC OF KENYA**

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

**CASE NO. 281 OF 2016**

**ANNAH KEMUMA OMWENGA ANGWENYI.....PLAINTIFF**

**VERSUS**

**MOKAYA MOMANYI.....1<sup>ST</sup> DEFENDANT**

**SILVESTER OCHARO.....2<sup>ND</sup> DEFENDANT**

**ATAMBO ONGERA.....3<sup>RD</sup> DEFENDANT**

**SABINA MOKAYA.....4<sup>TH</sup> DEFENDANT**

**JOHN OMWENGA.....5<sup>TH</sup> DEFENDANT**

**MORAA RIANGA.....6<sup>TH</sup> DEFENDANT**

**ZECHARIAH OBIYE.....7<sup>TH</sup> DEFENDANT**

**MOI OMWENGA.....8<sup>TH</sup> DEFENDANT**

**ZECHARIAH NYANCHOKA.....9<sup>TH</sup> DEFENDANT**

**J U D G M E N T**

1. The plaintiff instituted the instant suit vide a plaint dated 13<sup>th</sup> September 2016 in respect of the land parcel **West Kitutu/Mwamonari/2145** measuring approximately 0.03Hectares (hereinafter referred to as **“the suit property”**) and sought the following orders against the defendants jointly and severally:-

- a) **A declaration that the plaintiff is the registered owner of all that piece of land known as West Kitutu/Mwamonari/2145.**
- b) **An order of eviction against the defendants themselves, their agents, servants, family members and/or any persons acting on their behalf from and parcel No. West Kitutu/Mwamonari/2145 and a permanent injunction restraining them, their agents, servants, family members and/or any person’s action on their behalf from entering onto, cultivating, tiling, erecting any structures and/or in any manner interfere with the said land.**
- c) **Costs of the suit.**
- d) **Any other order this court deems fit to grant.**

2. In the plaint it is pleaded that the plaintiff is the registered owner of the suit property and the defendants without any justifiable cause are in occupation of various portions of the suit land. The plaintiff has further pleaded that despite several demands and notice of intention to sue having been given, the said defendants have refused to vacate or deliver vacant possession of the suit property hence necessitating the filing of the present suit.

3. Despite service of summons to all the defendants, the defendants did not enter appearance nor file any written statement of defence. The suit was fixed for hearing before me on 12<sup>th</sup> February 2018 and in spite of all the defendants again having been served with a hearing notice as per the filed affidavit of service none attended court and the hearing proceeded ex parte.

4. The plaintiff testified that she had sued the defendants for trespassing onto the suit land as she was the registered owner. She told the court that the defendants occupied the suit land in 2012 claiming that they had been allowed by her father-in-law's brother. She denied ever allowing the defendants to occupy the suit land or permitting the brother-in-law to allow them. She stated that the defendants only cultivated on the suit land, but however, the 4<sup>th</sup> defendant had built a temporary structure thereon. She explained that she had made a demand for the defendants to vacate the suit land as per her letter dated 5<sup>th</sup> July 2016 (“PEX.1”) but the defendants had refused to vacate. The plaintiff produced a copy of the title (“PEX.2”) and a copy of the mutation forms (“PEX.3”) in support of her case and further relied on her witness statement dated 13<sup>th</sup> September 2016. She prayed for the orders that the defendants be ordered to vacate from the suit land and in default to do so, an eviction order be issued against them.

5. I have carefully considered and reviewed the evidence tendered by the plaintiff which was uncontroverted since the defendants did not appear and/or tender any evidence. The evidence establishes that the plaintiff is the registered owner of land parcel **West Kitutu/Mwamonari/2145** as evidenced by the copy of title in the plaintiff's name dated 22<sup>nd</sup> October 2015 (“PEX.2”). As the registered owner of the suit property the plaintiff is vested with absolute rights of ownership and is entitled to exclusive rights of occupation and use in terms of Sections 24, 25 and 26 of the Land Registration Act. No. 3 of 2012.

6. Section 24(a) of the Act provides as follows:-

**(a) The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.**

The rights conferred upon a registered proprietor are indefeasible and can only be challenged in the manner provided under the Act under section 26 1(a) and (b) thus:-

**(a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**(b) Where the certificate of title has been acquired illegally, unprocedurally or through corrupt scheme.**

7. The defendants did not appear or file a defence with the result that the plaintiff's title to the suit land remains unchallenged in any respect. The plaintiff testified that the defendants have since 2012 been trespassing onto her land and have been carrying on cultivation thereon, whilst the 4<sup>th</sup> defendant has constructed a temporary structure thereon. The land is owned by the plaintiff and the defendants have no right or any justification to remain thereon. In the absence of any evidence from the defendants, I am constrained to accept the evidence of the plaintiff, that the defendants have trespassed onto her land unlawfully and without any justification. The defendants have no right to interfere with the plaintiff's ownership, occupation and use of the suit property.

8. In the premises, I find and hold the plaintiff has proved her case on a balance of probabilities and I accordingly enter judgment for the plaintiff against the defendants jointly and severally and make the following orders:-

**1. A declaration be and is hereby issued that the plaintiff is the registered owner of land parcel number West Kitutu/Mwamonari/2145.**

**2. The defendants, their agents, servants and family members and/or any persons claiming through them are hereby ordered to vacate land parcel number West Kitutu/Mwamonari/2145 within thirty (30) days of being served with the decree in this matter.**

**3. In the event there is no compliance with order (2) above an eviction order for the forcible removal of the defendants, their agents and/or servants to be issued to the plaintiff on application.**

**4. The costs of the suit are awarded to the plaintiff against the defendants jointly and severally.**

**JUDGMENT DATED, SIGNED and DELIVERED at KISII this 11<sup>TH</sup> DAY of MAY, 2018.**

**J. M. MUTUNGI**

**JUDGE**

**In the presence of:**

Mr. Soire for the plaintiff

N/A for the 1<sup>st</sup> to 9<sup>th</sup> defendants

Ruth court assistant

**J. M. MUTUNGI**

**JUDGE**