



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 48 OF 2016**

**BERNARD MAUNDU MBINDYO .....PLAINTIFF**

**VERSUS**

**JAMES KIILU KATITU.....1<sup>ST</sup> DEFENDANT**

**DAVID NDUNGO KIVUVO .....2<sup>ND</sup> DEFENDANT**

**MUTAVA MUSAU (*operating under the name***

**NGWATANIO YA ANAKE MA MUMBUNI)....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. In the Plaintiff dated 1<sup>st</sup> May, 2016, the Plaintiff averred that on 20<sup>th</sup> March, 2007, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sold to him plot number 1 situated at Mumbuni market for Kshs. 15,000; that he took possession of the land and developed it and that the Defendants have trespassed on the land claiming that they only sold a portion of the land to the Plaintiff.
2. The Plaintiff is seeking for an injunction restraining the Defendants from trespassing on the suit land. The Plaintiff also wants the Defendants to be ordered to remove the building materials that they have deposited on the suit land.
3. The Defendants neither entered appearance nor filed a Defence. The matter proceeded for hearing on 1<sup>st</sup> February, 2018.
4. The Plaintiff, PW1, informed the court that he lives in Mumbuni and that he is a businessman at Mumbuni market in Mwala; that on 20<sup>th</sup> March, 2007 he bought the suit land from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and that he has been planting dry maize and cash crops on the land until May, 2016 when the Defendants started trespassing on the land. It was the evidence of PW1 that the suit land is within a market and that he pays rates to the county government.
5. The Plaintiff produced in evidence the Sale Agreement dated 20<sup>th</sup> March, 2007 that he entered into with the Defendants in respect to the suit land.
6. The Plaintiff's counsel submitted that the right to own property is protected under Article 40; that the protection to own property can be exercised through injunctive orders as provided for under Section 13(7) (a) of the Environment and Land Court Act and the suit should be allowed.
7. The evidence before me shows that the Plaintiff purchased Plot No. 1 in Mumbuni market from the Defendants vide an agreement dated 20<sup>th</sup> March, 2007. The Defendants did not file a Defence to rebut that averment. Having not rebutted the Plaintiff's evidence, I am convinced that indeed it is the Plaintiff who is entitled to the suit land to the exclusion of the Defendants.
8. For those reasons, I find and hold that the Plaintiff has proved his case on a balance of probability. I therefore allow the Plaintiff dated 1<sup>st</sup> May, 2016 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF MAY, 2018.**

**O.A. ANGOTE**

**JUDGE**