



**THE REPUBLIC OF KENYA**

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

**ELC NO. 116 OF 2007**

**PHILIP NGUI MUNGUTI.....PLAINTIFF**

**VERSUS**

**DAVID NGUI.....1<sup>ST</sup> DEFENDANT**

**AGNES KATILO MUNGUTI.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1) Philip Ngui Munguti (*hereinafter referred to as the plaintiff*) is the registered proprietor of land parcel number Masii/Embui/84. He allowed Agnes Katilo Munguti (*hereinafter referred to as the second defendant*) to use the said land parcel Number Masii /Embui/84 for a while. David Ngui (*hereinafter referred to as the first defendant*) who is his son entered into the land. The two defendants have declined to move out of the suit land which the plaintiff has already sold to one Peter Mulei.

2) By his plaint dated 21<sup>st</sup> December, 2007 and filed in court on 24<sup>th</sup> December, 2007 the plaintiff prays for judgement against the defendants Jointly and severally for:-

**a) An order of injunction to restrain the defendants jointly or severally from entering, remaining thereon, using or otherwise interfering with the plaintiffs' right to possession sell or otherwise dispose off any of his land nos. Masii/Embui/81 & 84 during the plaintiff's life time.**

**b) An order of eviction to forcefully remove the 2<sup>nd</sup> defendant from plaintiff's parcel No. Masii/Embui/84.**

**c) Costs and interest.**

**d) Any other or further relief the honourable court may deem fit to grant.**

3) The claim is denied by the first defendant through his defence dated 23<sup>rd</sup> January, 2008 and filed in court on the 28<sup>th</sup> January, 2008. Even though the first defendant has referred to his defence, as "*defence and counter claim*" there is no counterclaim and as such, what the first defendant has filed is merely a defence without a counterclaim.

4) Equally, the second defendant filed her defence on the 28<sup>th</sup> January, 2008 the same being dated on even date.

5) The plaintiff's case was heard by Justice Isaac Lenaola (*as then he then was*). On the 12<sup>th</sup> March, 2015 directions that the case was to proceed from where it had reached were issued by Justice Charles Kariuki.

6) The plaintiff's evidence in chief was that he bought the suit land in the year 1968 for a sum of Kshs. 2,700/-. He produced a title deed issued to him as PEX No. 1. It was his evidence that he allowed the second defendant who is his sister to use it for a short while after she was chased away by her husband. The plaintiff added that the first defendant has his own land. He went on to say that the first defendant has leased the land which he gets paid for even though he (*the plaintiff*) has sold it to one Peter Mulei.

7) The plaintiff's evidence in cross-examination by Mr. Nyakeri for the defendants that he merely allowed the second defendant to enter and live on the land and that she has been on the land since 1998 or 1999. He disclosed that they have had meetings over the dispute concerning the land and one of which was on the 18<sup>th</sup> July, 2004 where it was agreed he and his brothers raise money to buy land for the second defendant. He denied having even been paid Kshs. 8000 by the second defendant towards the purchase of the land or having ever made a demand for 30,000 from her. He said that the first defendant is illegally on his land.

8) The plaintiff called Munguti Musyoka (PW2) as his witness. The witness told the court that he is the chairman of Aanziu clan and that he

knows the plaintiff and the defendants. He said that he was called upon to arbitrate over their dispute. He said that the meeting was held in the home of the parties and it was decided that the land belongs to the plaintiff. The second defendant was asked to move back to her ancestral land but she refused. The witness produced the arbitration report as PEX no. 2.

9) Musyoki's evidence in cross-examination was that he never got any evidence that the second defendant had bought the suit land.

10) The plaintiff rested his case on the 1<sup>st</sup> August, 2008. The matter was fixed for defence hearing on several occasions but hearing never took place. On the 1<sup>st</sup> December, 2009, the court was informed that Mr. Nyakeri had passed on whereupon it ordered that the defendants be served personally. On the 23<sup>rd</sup> February, 2010 D.M Mutinda and Company Advocates filed a notice of change of Advocate dated 22<sup>nd</sup> February, 2010 on behalf of the two defendants. In spite of the several hearing notices to the defendants, neither they nor their counsel appeared in court for defence hearing resulting in their case deemed as closed by this court on the 5<sup>th</sup> December, 2017.

11) The plaintiff's counsel in his submissions raised two(2) issues for determination. These were:-

**1. Whether the land known as Masii/Embui/81 and 84 belong to the plaintiff herein?**

**2. Whether the 1<sup>st</sup> and 2<sup>nd</sup> defendant should permanently vacate the land parcel number Masii/Embui/84?**

12) In answer to the two issues for determination the plaintiff's counsel cited section 24 (a) of the Land Registration Act Number 3 of 2012 which provides that 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 counsel also cited section 25(1) of the same Act and urged the court to find in favour of the plaintiff and grant the orders sought.

13) From the evidence on record, land certificate number Masii/Embui/84 shows the plaintiff as the absolute proprietor of land parcel number 84.

14) The plaintiff's evidence remained unchallenged in cross-examination and having looked at the defence and counterclaim of the first defendant as well the defence of the second defendant, there is nothing to shake the plaintiff's evidence. I am satisfied that the plaintiff has satisfied this court that he has a cause of action against the defendants and in the circumstances, I hereby proceed to enter judgement for the plaintiff and against the two defendants jointly and severally as hereunder:-

**a) An order of injunction to restrain the defendants jointly or severally from entering, remaining thereon, using or otherwise interfering with the plaintiffs' right to possession sell or otherwise dispose off any of his land Nos. Masii/Embui/81 & 84 during the plaintiff's life time.**

**b) Subject to an application being made in court for their eviction.**

**c) Costs and interest.**

**Signed, dated and delivered at Makeni this 25th day of June, 2018.**

**MBOGO C.G**

**JUDGE**

**IN THE PRESENCE OF :**

No appearance for the plaintiff

No appearance for the defendant

Mr. Kwemboi Court Assistant

**MBOGO C.G, JUDGE**

**25/6/2018**