



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**CASE NO. 92 OF 2014**

**SAMSON NJUGUNA KIMANI.....PLAINTIFF**

**VERSUS**

**SIMON MBUTHIA KIMANI.....DEFENDANT**

**JUDGMENT**

1. By plaint filed on 4<sup>th</sup> April 2014, the plaintiff averred that he is the registered proprietor of the parcel of land known as Dundori/Mugwathi Block 1/2700 (Wanyororo 'A'), the suit property and that around the year 2013 the defendant trespassed onto the suit property and erected a semi-permanent building on it. The plaintiff therefore seeks judgment against the defendant for vacant possession and a permanent injunction restraining the defendant from dealing with the suit property.

2. Despite being served with summons to Enter Appearance, the defendant neither entered appearance nor filed any defence. Similarly, the defendant did not attend the hearing despite being served.

3. The plaintiff testified that he is the registered proprietor of the parcel of land known as Dundori/Mugwathi Block 1/2700 (Wanyororo 'A'). He showed the court the original of his title deed but produced a copy of it as an exhibit. He also produced a certificate of search dated 3<sup>rd</sup> April 2014. He became registered proprietor of the plot on 26<sup>th</sup> April 2013. He added that the defendant trespassed onto the suit land in the year 2013 and erected a mud walled house on it. The defendant is also cultivating the land. When the plaintiff realized that the defendant had trespassed on the land, he instructed his advocates who wrote to the defendant demand letters dated 4<sup>th</sup> February 2014 and 19<sup>th</sup> February 2014. The defendant did not comply with the demands. The plaintiff thus urged the court to grant him vacant possession and costs of the suit.

4. At the conclusion of the plaintiff's testimony both the plaintiff's and defence cases were closed. Parties were ordered to file written submissions. The plaintiff's submissions were filed on 10<sup>th</sup> October 2017. Dispute being served with the order requiring filing of submissions, the defendant filed none. It was submitted on behalf of the plaintiff that the plaintiff's case had been proven and the court was urged to grant judgment as prayed.

5. I have considered the pleadings, the evidence and the submissions. The plaintiff's case and evidence is not challenged in any way by the defendant. From the material placed before the court, I am satisfied that the plaintiff is the registered proprietor of the parcel of land known as **Dundori/Mugwathi Block 1/2700 (Wanyororo 'A')** and that the defendant trespassed into the said property and erected a building thereon without the plaintiff's consent.

6. Accordingly, I enter judgment in favour of the plaintiff as follows:

a. The defendant and his agents or servants to vacate the parcel of land known as **Dundori/Mugwathi Block 1/2700 (Wanyororo 'A')** within thirty (30) days of service upon him of these orders. In default, the defendant and his agents or servants be evicted from the said property. The eviction to be done in accordance with the provisions of section 152G (1) (a), (c) to (i) of the Land Act, 2012.

b. A permanent injunction is hereby granted restraining the defendant and his agents or servants from dealing in any manner whatsoever with the parcel of land known as **Dundori/Mugwathi Block 1/2700 (Wanyororo 'A')**.

c. Costs of this suit are awarded to the plaintiff.

7. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 20<sup>th</sup> day of June 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Ms Cheruto holding brief for Mr Otieno for the plaintiff

No appearance for the defendant

Court Assistants: Gichaba & Lotkomoi