



**REPUBLIC OF KENYA**

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

**ELC NO. 350 OF 2017**

**GRISON MASIKA KIOKO.....PLAINTIFF**

**VERSUS**

**TABITHA MUTIE SIMBA.....DEFENDANT**

**JUDGMENT**

1. By his plaint dated 09<sup>th</sup> October, 2014 and filed in court on 10<sup>th</sup> October, 2014 the Plaintiff prays for judgment against the Defendant for;

**a) An order of a permanent injunction restraining the Defendant, her servants, workers, agents or anybody howsoever claiming under her from trespassing, cultivating, remaining on and/or in any other manner dealing with L.R. No. Makueni/Nguu Ranch/940 contrary to the Plaintiff's rights.**

**b) Eviction of the Defendant, her workers, servants, agents or claiming under her name howsoever from L.R. No. Makueni/Nguu Ranch/940.**

**c) Costs of the suit.**

**d) Any other or further relief as this Honourable Court may deem fit and just to grant.**

2. On the 16<sup>th</sup> February, 2015 the Defendant was served with summons to enter appearance and file her defence. She neither entered appearance nor did she file her defence. Having failed to do so, the Plaintiff applied for interlocutory judgment to be entered. The Plaintiff's request for entry of judgment is dated 11<sup>th</sup> March, 2015 and was filed in court and on the 13<sup>th</sup> March, 2015. Consequently, when this suit was transferred to this court on the 12<sup>th</sup> October, 2017 the court directed that it shall proceed as undefended suit.

3. During the hearing, the Plaintiff adopted his statement dated 09<sup>th</sup> October, 2014 and filed in court on 10<sup>th</sup> October, 2014 as his evidence. In the statement, the Plaintiff says that he is the registered owner of LR No. Makueni/Nguu Ranch/940 measuring approximately 4.3 hectares (approximately ten (10) acres) situated within Makueni County. That in the month of September, 2015 the defendant without colour of right and/or authority from him unlawfully entered into his land and proceeded to construct a semi-permanent house. He added that she cut down trees and cleared vegetation growing in the said land and also cultivated on it. He termed the Defendant's action as trespass and asked the court to restrain her by issuing an order against her. He said that he instructed his advocate to issue a demand letter to the defendant.

4. He produced a certificate of outright purchase, a copy of title deed number Makueni/Nguu Ranch/940, certificate of official search and the demand letter as P.Exhibit Nos. 4, 2, 3 and 1 respectively.

5. The Plaintiff's Counsel filed the plaintiff's statement of issues on the 27<sup>th</sup> March, 2015 the same being dated 26<sup>th</sup> March, 2015. The issues as framed in the statement are:-

**1) Whether the Plaintiff is the registered proprietor of L.R No. Makueni/Nguu Ranch/940.**

**2) Did the Defendant illegally enter into the Plaintiff's land as alleged in paragraph 4 of the Plaintiff?**

**3) Whether the Defendant's action amounted to trespass.**

**4) Whether the plaintiff has suffered loss and damage as a result of the Defendant's unlawful actions.**

**5) Whether the plaintiff is entitled to an order of permanent injunction against the Defendant, her workers, servants and/or**

agents.

**6) Should an eviction order issue against the Defendant, her servants, workers and/or agent from L.R No. Makueni/Nguu Ranch/940?**

**7) What orders as to cost should the court make?**

6. The Plaintiff's Counsel in his written submissions appears to have deviated from addressing those issues save that he urged the court to grant the orders sought in the plaint.

7. Having read the evidence on record, I would agree with the Plaintiff's Counsel that the plaintiff has a cause of action against the Defendant. The documents that he produced in evidence and more particularly the certificate of outright purchase (P.exhibit No.4), copy of title deed number LR Makueni/Nguu Ranch/940 (P.Exhibit No.2) and certificate of official search (P.Exhibit No.3) clearly show that the plaintiff is the registered owner of the suit land. In the circumstances, I hereby proceed to enter judgment for the Plaintiff in terms of prayers (a), (b) and (c).

**Signed, Dated and Delivered at Makueni this 29<sup>th</sup> Day of October, 2018.**

**MBOGO C.G,**

**JUDGE**

**IN THE PRESENCE OF:**

Mr. Kwemboi Court Assistant

No appearance for the Plaintiff

**MBOGO C.G, JUDGE**

**29/10/2018**