



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 163 OF 2016**

**JANET MUMBUA NZYOKI.....1<sup>ST</sup> PLAINTIFF**

**MELI NZIOKI MUIA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MUSYOKA MULANDI.....1<sup>ST</sup> DEFENDANT**

**MAKAU MUSYOKA.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In the Complaint dated 21<sup>st</sup> October, 2016, the Plaintiffs averred that on 4<sup>th</sup> October, 1999 and 26<sup>th</sup> March, 2004, the 2<sup>nd</sup> Plaintiff purchased 1.07Ha from the 1<sup>st</sup> Defendant for Kshs. 90,000; that the 2<sup>nd</sup> Plaintiff paid the full amount and took possession of parcel of land known as Ikalaasa/Ndithini/790 (*the suit land*) and that on 8<sup>th</sup> July, 2016, the Defendants entered the suit land and purported to remove the boundaries and fence from the suit land.

2. Being the registered proprietors, the Plaintiffs are praying for a permanent injunction restraining the Defendants from dealing with the suit land. The Plaintiffs are also seeking for general damages for trespass.

3. Though the Defendants were served, they neither entered appearance nor filed a Defence. The matter proceeded for formal proof on 1<sup>st</sup> March, 2018.

4. The 2<sup>nd</sup> Plaintiff, PW1, informed the court that he is one of the registered proprietors of parcel of land known as Ikalaasa/Ndithini/790 together with the 1<sup>st</sup> Plaintiff who is her daughter; that they purchased the suit land from the 1<sup>st</sup> Defendant whom they paid the full purchase price of Kshs. 90,000 and that they took possession of the land. According to PW1, the Defendants trespassed on the suit land and started interfering with the beacons and the fence. They also stopped them from developing the suit land. PW1 informed the court that the Defendants should be restrained from interfering with their peaceful possession of the suit land.

5. The 2<sup>nd</sup> Plaintiff produced in evidence the several Sale Agreements that she entered into with the Defendants. The 2<sup>nd</sup> Plaintiff also produced in evidence the Title Deed that was issued in her favour and the 1<sup>st</sup> Plaintiff on 12<sup>th</sup> January, 2014. Considering that the Defendant has not rebutted the Plaintiffs' case, and in view of the provisions of Article 40(1) of the Constitution and Section 26 of the Land Registration Act, I find that the Plaintiffs have proved their claim on a balance of probability.

6. For those reasons, I allow the Complaint dated 21<sup>st</sup> October, 2016 in the following terms:

***a. A permanent injunction be and is hereby issued restraining the Defendants, their agents and or servants from alienating, disposing, entering, trespassing or interfering in any manner whatsoever in parcel of land known as Ikalaasa/Ndithini/790.***

***b. The Defendants to pay the costs of the suit.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19<sup>TH</sup> DAY OF OCTOBER, 2018.**

**O.A. ANGOTE**

**JUDGE**