



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 408 OF 2017**

**JOSEPH KAMUYA MAITHA.....PLAINTIFF**

**VERSUS**

**NOAH LEINAH.....1<sup>ST</sup> DEFENDANT**

**EMMANUEL TAISON.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In the Amended Plaintiff dated 4<sup>th</sup> April, 2018, the Plaintiff is seeking for an order compelling the Defendants to vacate land known as L.R. No. 1258, I.R. 40811 situate in Machakos County. The Plaintiff is premised on the grounds that the Plaintiff is the registered proprietor of L.R. No. 1258, I.R. 40811 measuring 48.56Ha; that in the year 2015, he allowed the Defendants to keep their herd of cattle on the suit land and that even after giving the Defendants a notice to vacate the land, they have refused to do so.

2. Although the Defendants were served with the Summons to Enter Appearance and the Plaintiff, they neither entered appearance nor filed a Defence. The Plaintiff testified on 17<sup>th</sup> September, 2018. It was the evidence of the Plaintiff, PW1, that he is the registered proprietor of the land. The Plaintiff produced in evidence a copy of the grant for L.R. No. 12581.

3. PW1 informed the court that he is the registered owner of half an acre of Plot No. L.R. No. 12581/8 measuring 48.56Ha which he purchased; that in the year 2015, he allowed the Defendants to keep their herd of cattle on the said land and that they have since refused to vacate the land even after serving them with a notice to vacate.

4. It is trite that the registration of a person as the proprietor of land vests in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto (*see Section 24 of the Land Registration Act*). Indeed, the rights of the registered proprietor of land can only be defeated on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the Certificate of Title has been acquired illegally, unprocedurally or through a corrupt scheme (*See Section 26 of the Land Registered Act*).

5. The Defendant has not traversed the allegations raised by the Plaintiff in the Plaintiff. Indeed, there is no evidence before the court to show that the Title Deed that the Plaintiff is holding was acquired fraudulently or by misrepresentation. Consequently, I find that the Plaintiff has proved that he is the lawful owner of the suit land.

6. For those reasons, I allow the Plaintiff's Amended Plaintiff dated 4<sup>th</sup> April, 2018 as follows:

***a. An order be and is hereby issued compelling the Defendants to vacate parcel of land L.R. No. 12581, I.R 40811 situate in Machakos County.***

***b. A permanent injunction be and is hereby issued restraining the Defendants, their servants, agents and or employees or any other person whomsoever is claiming through them from herding their cattle on L.R. 12581, I.R. 40811 and from doing any other prejudicial act on the land.***

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

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2018.**

**O.A. ANGOTE**

**JUDGE**