



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT KISUMU**

**LAND CASE NO. 67 OF 2015**

*(Before Hon. Justice B. N. Olao)*

**THOMAS ODHIAMBO OKUMU.....PLAINTIFF**

**=VERSUS=**

**KENNEDY ODHIAMBO ONYANGO.....DEFENDANT**

**J U D G M E N T**

By his Complaint filed herein on 19<sup>th</sup> March 2015, the Plaintiff sought Judgment against the Defendant in the following terms:-

1. An order of eviction of the Defendant from the land parcel no. **KISUMU/NYALENDA 'B'/2540** and a permanent injunction restraining the Defendant either by himself, through his agents, employees, servants, relatives and/or any other person deriving authority from them from entering, occupying, putting up structures and/or interfering with the parcel no. **KISUMU/NYALENDA 'B'/2540**.
2. Costs of the suit.

The basis of the Plaintiff's Claim is that he is the registered proprietor of the land parcel no. **KISUMU/NYALENDA 'B'/2540** (herein the suit land) on which the Defendant has trespassed and put up structures thus necessitating this suit. The Plaintiff has also filed a list of documents and a supplementary list of documents dated 29<sup>th</sup> October, 2018 in support of his case.

When the parties appeared before **HON. A. ODAWO** Deputy Registrar on 25<sup>th</sup> September, 2018 to confirm if they were ready to be heard during the service week, they both confirmed that they were ready for trial. The Plaintiff's Counsel **MR. ORENGO** told the court he would be calling three witnesses while **MS. IMBAYA** holding brief for **MR. ABANDE** for the Defendant stated that he would be calling one witness. The suit was therefore fixed for hearing on 31<sup>st</sup> October, 2018.

On the hearing date, the court was informed that both counsel would be ready for hearing and a time allocation was given for 10.30 am. However, at the allocated time, there was no appearance by either the Defendant or his counsel and the court allowed the Plaintiff to proceed with his case since there was no explanation as to the absence of the Defendant or his counsel.

The Plaintiff adopted as his evidence the witness statement dated 10<sup>th</sup> March, 2015 as well as the list of documents and the supplementary list of documents dated 29<sup>th</sup> October, 2018. He also called as his witness **ANDREW OKWIRI ODUKA (PW 2)** who also adopts as his evidence his witness statement dated 10<sup>th</sup> March, 2015.

The Plaintiff's evidence, as can be gleaned from his statement is that he purchased the suit land on 27<sup>th</sup> December, 2013 from **ANDREW OKWIRI ODUKA (PW 2)** after conducting a search at the Lands Office and confirming that it belonged to **ANDREW OKWIRI ODUKA (PW 2)**. He obtained the necessary consent to transfer and the suit land was transferred to him on 31<sup>st</sup> March, 2014 and he has the title deed to the same. In February 2015, he was informed that someone had erected a structure on the suit land and when he went to investigate, he found that it was the Defendant. Upon asking him to stop the construction, the Defendant declined saying the suit land is his.

**ANDREW OKWIRI ODUKA (PW2)** confirmed that indeed he sold the suit land to the Plaintiff at Kshs.525,000.

In the course of this trial, I noticed that the Defendant has not filed any defence. When I enquired from **MR. ORENGO** if he had been served with a defence, he too confirmed that he had not been served with any. All I can see in the file is a replying affidavit by the Defendant dated 31<sup>st</sup> July, 2015 to the Plaintiff's Notice of Motion dated 10<sup>th</sup> March, 2015 seeking an order restraining the Defendant from trespassing onto the suit land. It is clear therefore that the Plaintiff's claim is not defended.

I have considered the Plaintiffs evidence, uncontroverted as it is. The Plaintiff is the registered proprietor of the suit land and holds the title deed thereof issued on 31<sup>st</sup> March, 2014 (Exhibit No. 8). The suit land was previously registered in the names of **ANDREW OKWIRI ODUKA (PW 2)** who also had a title deed issued in his names on 12<sup>TH</sup> February, 2013 (Exhibit No. 4). In the absence of any evidence to the contrary, this court must make a finding that the Plaintiff is the absolute owner of the suit land in terms of the provisions of section 24 and 25 of the Land Registration Act under which the title to the suit land was issued. As the registered proprietor of the suit land and in the absence of any evidence alleging that the Plaintiff obtained the title thereto fraudulently, he is entitled to enjoy all the rights and privileges that an appurtenant thereto. These include the right to eject trespasses therefrom and as is now clear, the Defendant is a trespasser on the suit land and an order for his eviction therefrom is well merited.

There shall be Judgment for the Plaintiff against the Defendant in the following terms:-

(i) An order that the Defendant removes his structures or any other properties from the land parcel no. **KISUMU/NYALENDA 'B'/2540** within 30 days from the date of this Judgment failure of which he be evicted therefrom in accordance with the law.

(ii) An order of permanent injunction restraining the Defendant either by himself or through his agents, employees, servants, relatives or any other person deriving authority from him from entering, occupying, putting up structures and/or interfering with the land parcel no. **KISUMU/NYALENDA 'B'/2540**.

(iii) As the suit was not defended, there shall be no order as to costs.

**Judgment Dated, Signed and Delivered this 2nd day of November, 2018 in Open Court at Kisumu**

**Mr. Orengo for the Plaintiff**

**Mr. Abande for the Defendant**

**B. N. Olao**

**Judge**

**2/11/2018**