

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 247 OF 2015

JACKSON KYALO MUTISYA.....PLAINTIFF

VERSUS

CATHERINE MUKII KITHEKA1ST DEFENDANT

MUTUNGA KITHEKA2ND DEFENDANT

WAMBUA KITHEKA.....3RD DEFENDANT

JUDGMENT

1. In the Plaintiff dated 15th December, 2015, the Plaintiff averred that he is the registered proprietor of a parcel of land known as Mitaboni/Mutituni/616 situate in Mutituni, Machakos; that during his childhood, the African Inland Church purchased the suit land; that he granted to the Defendants a license to occupy the suit land and that when the African Inland Church purchased the land, it gave to the Defendants a notice of two (2) years to vacate the land.
2. The Plaintiff's prayers is for vacant possession of land parcel number Mitaboni/Mutituni/616 and for an order of eviction to issue. The Defendants neither entered appearance nor filed a Defence even after being served with the Summons to Enter Appearance and the Plaintiff.
3. The Plaintiff, PW1, informed the court that he is the registered proprietor of the suit land; that he granted to his uncle and his family a license to occupy the suit land and that later on, he issued the Defendants with a notice to vacate the land and that they have declined to move out.
4. The Plaintiff produced in evidence a letter dated 25th September, 2015 by the Chief of Mutituni location. In the said letter, the Chief stated that the suit land is owned by the Plaintiff and that the Defendants, who are intruders on the suit land, have been threatening the Plaintiff.
5. PW1 also produced in evidence the letter dated 26th June, 2015 by his advocate. In the said letter, the Plaintiff's advocate warned the Defendants against burying one Joseph Kitheka Mutisya on the suit land. Also produced in evidence is a copy of the Title Deed that was issued to the Plaintiff on 4th April, 2013.
6. The Plaintiff's evidence that he is the registered proprietor of land known as Mitaboni/Mutituni/616 has not been controverted by the Defendants. Being the registered proprietor of the suit land, the Plaintiff is entitled to the exclusive possession and use of the land. Consequently, I find and hold that the Plaintiff has proved his case on a balance of probabilities.
7. For those reasons, I allow the Plaintiff's Plaintiff dated 15th December, 2015 as follows:

a. The Defendants, their agents, servants and or family members be and are hereby ordered to vacate parcel of land known as Mitaboni/Mutituni/616 within sixty two (62) days of the date of this Judgment.

b. In default of compliance with prayer number (a) above, the Defendants be evicted from the suit land.

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

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 14TH DAY OF DECEMBER, 2018.

O.A. ANGOTE

JUDGE