

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 461 OF 2017

KENNEDY MUNYAO.....1ST PLAINTIFF

MONICA BENJAMIN MUTHOKA.....2ND PLAINTIFF

VERSUS

JOSEPH KIPKORIR KIPKURUI.....DEFENDANT

JUDGMENT

1. In the Plaintiff dated 21st November, 2017, the 1st Plaintiff averred that he is the registered proprietor of land known as Plot No. 314 held as a share in Kimongo Self Help Group located on parcel of land number Mavoko Town Block 3/6270; that the rights and interests of ownership of the land was vested in the 1st Plaintiff upon execution of an agreement dated 29th June, 2010 and that it is the 2nd Plaintiff who developed the land. According to the Plaintiffs, the Defendant has refused to vacate the suit land and that an order of eviction should issue.

2. The Defendant did not enter appearance nor file a Defence after being served with the Summons to Enter Appearance and the Plaintiff. The 2nd Plaintiff, PW1, informed the court that she is the biological mother of the 1st Plaintiff; that she purchased plot number 314 which is located within parcel of land known as Mavoko Town Block 3/6270 from Salome Mutindi Benson, which was held as a share in Kimongo Self Help Group and that she then constructed a house on the land.

3. It was the evidence of PW1 that after constructing the house, the Defendant forcefully ejected her and the 1st Plaintiff from the house and that he has since refused to vacate.

4. The 1st Plaintiff, PW2, stated that her mother, the 2nd Plaintiff, purchased for him the suit land; that he was given a letter of allotment from the Self Help Group and that her mother developed the suit land. According to PW2, the Defendant was allowed by his mother to live in the house which is located on the suit land. However, he has since refused to vacate the suit premises.

5. PW3 informed the court that she was the previous owner of a plot located on Mavoko Town Block 3/6270; that she sold the said plot to the 2nd Plaintiff for Kshs. 70,000 and that the Defendant has refused to vacate the suit land.

6. To support her claim, the 2nd Plaintiff, PW1, produced in evidence the Agreement dated 29th June, 2010 that PW2 entered into with Salome Mutindi, PW3. PW1 also produced a copy of the letter of allotment which was issued in favour of the 1st Plaintiff by Kimongo Self Help Group in respect of Plot number 314 on L.R. No. 6270.

7. Considering that the Plaintiffs are in possession of a letter of allotment for Plot No. 314, and in the absence of any evidence by the Defendant to show that he has superior rights over the land, I find that the Plaintiffs have proved their case on a balance of probability. The Plaintiff dated 29th November, 2017 is therefore allowed as follows:

a. The Defendant to be evicted from Plot No. 314 on parcel of land known as Mavoko Town Block 3/6270 within sixty (60) days of being served with this order.

b. The Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 7TH DAY OF DECEMBER, 2018.

O.A. ANGOTE

JUDGE