



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 84 OF 2017**

**JAMES WAMBUA KITHEKA.....PLAINTIFF**

**VERSUS**

**NORMAN WAMBUA MASEKI.....DEFENDANT**

**JUDGMENT**

1. In the Plaint dated 18<sup>th</sup> January, 2017, the Plaintiff averred that he is the beneficial owner of a parcel of land known as Nzambani/Kyanika/2219; that on 10<sup>th</sup> December, 1998, the Plaintiff entered into a Sale Agreement with the Defendant where the Defendant agreed to sell a portion of the suit land measuring 100feet by 100feet and that the Plaintiff bought further portions of the suit land from the Defendant's son, Muema Wambua, on 18<sup>th</sup> July, 2000, 14<sup>th</sup> September, 2000 and 13<sup>th</sup> November, 2002.

2. It is the Plaintiff's case that after paying the full purchase price to the Defendant, the Defendant hired a gang of boys who pulled down the fence of wire which he had put up. The Plaintiff is seeking for a declaration that he is the owner of the suit land and for a permanent injunction restraining the Defendant from interfering with his possession of the suit land.

3. Although the Defendant was served with the Summons to Enter Appearance and the Plaint, he neither entered appearance nor filed a Defence. The matter proceeded for hearing on 28<sup>th</sup> September, 2017 in his absence.

4. The Plaintiff, PW1, narrated to the court how he purchased the suit land from the Defendant on different dates. It was the evidence of PW1 that the land he bought from the Defendant measure 350feet by 350feet and that he thereafter took possession of the land. PW1 produced in evidence the Sale Agreements that he entered into with the Defendant in respect to the portions of the suit land that he purchased.

5. PW2 stated that he was a neighbour of the Plaintiff; that he is the one who did the Sale Agreements that the Plaintiff entered into with the Defendant and that he witnessed the signing of those Agreements. According to PW2, the Defendant was always accompanied with his grandson during the signing of the Agreements in respect to the suit land.

6. The Plaintiff's wife, PW3, reiterated the evidence of her husband, PW1. According to PW3, the Plaintiff paid for the portions of land he bought from the Defendant separately between 1998 and the year 2005 and that she was involved in all those transactions.

7. The Defendant did not rebut the Plaintiff's evidence that he purchased the suit land from him. Indeed, the Plaintiff, after purchasing the said land, fenced it. The Plaintiff having produced the Sale Agreements that he entered into with the Defendant, I am satisfied that the Plaintiff has proved his case on a balance of probabilities.

8. For those reasons, I allow the Plaint dated 18<sup>th</sup> January, 2017 in terms of prayer Nos. a, b, c and d.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 7<sup>TH</sup> DAY OF DECEMBER, 2018.**

**O.A. ANGOTE**

**JUDGE**