



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 411 OF 2017

(FORMELY NAIROBI ELC CASE NO. 516 OF 2011

BARUTHI BUNDI.....PLAINTIFF

VERSUS

IBRAHIM KANG'ETHE.....1ST DEFENDANT

ISAACK KAMAU KABUE.....2ND DEFENDANT

PETER NJOROGE KABOGO.....3RD DEFENDANT

JOSHUA NJOROGE.....4TH DEFENDANT

PETER MWANGLI.....5TH DEFENDANT

DANIEL WATUKU.....6TH DEFENDANT

JOEL KINUTHIA WANDUA.....7TH DEFENDANT

PETER MURIGI NJUGUNA.....8TH DEFENDANT

JOSEPHAT WANGEKA.....9TH DEFENDANT

MUCHIRI NDIRANGU.....10TH DEFENDANT

PETER KINUTHIA.....11TH DEFENDANT

SAMUEL WAWERU.....12 DEFENDANT

GABRIEL KAMAU WAWERU.....13TH DEFENDANT

ZACHARIA MUCHIR.....14TH DEFENDANT

MWANGI KAMAU.....15TH DEFENDANT

FRANCIS WAWERU.....16TH DEFENDANT

DAVID NDIRANGU.....17TH DEFENANT

NDOGE NGUGI.....18TH DEFENDANT

JUDGMENT

The Plaintiff alleged in the Plaint dated *26th September, 2011* which was amended on *26th January, 2012* that he is the registered proprietor

of Land known as **Thika Municipality Block 11/863** (the suit property); that the defendants were engaged in small scale business of various forms and that while in the process of conducting their business, they encroached on the suit land.

The Plaintiff is praying for a permanent injunction to restrain the Defendants from trespassing on the suit land; general damages for trespass on the suit land and for an order of eviction of the Defendants from the suit land. Although the Defendants were served with the Plaint and the Summons, they neither entered appearance nor filed a Defence. The matter proceeded for formal proof on **7th November, 2018**.

The Plaintiff, P.W.1, informed the court that he is the registered proprietor of a parcel of Land known as Thika Municipality **Block 11/863**; that he obtained an approval to construct a perimeter wall around the plot which he did and that the Defendants demolished the perimeter wall that he had constructed whereafter they put up kiosks and other structures on the suit land.

The Plaintiff produced in evidence the Certificate of Lease in respect to the suit land, the beacon Certificate and the photographs showing the temporary structures that have been built on the suit land by the Defendants.

The Plaintiffs' advocate submitted that under **Article 40(1)** of the Constitution, he has the right to acquire and own property and that under **Section 24** and **26** of the Land Registration Act, the certificate of title is to be held as conclusive evidence of the proprietorship of land.

The Plaintiff produced in evidence a Certificate of Lease showing that he was registered as the proprietor of a parcel of land known as Thika Municipality **Block 11/863** on **5th December, 2008**. The Defendants did not adduce any evidence to show that the said title was obtained by fraud or misrepresentation or that the title was acquired illegally, unprocedurally or through a corrupt scheme

Being the registered proprietor of the suit land, the Plaintiff is entitled to the exclusive possession of the same. The Defendants having not shown any recognized right in respect to the suit land should therefore give to the Plaintiff vacant possession of the same

For those, and on the basis of the evidence before me, I find that the Plaintiff has proved his claim on a balance of probabilities. I therefore allow the amended Plaint dated **26th January, 2012** in the following terms.

a. An Order of Permanent Injunction be and is hereby issued restraining the 1st to 18th defendants whether by themselves, their servants, agents and/or employees from trespassing on and dealing in any manner whatsoever with the Plaintiff's land known as Thika Municipality Block 11/863

b. An Order of eviction be and is hereby issued against all the defendants, and/or their agents, servants and employees from a parcel of land known as Thika Municipality Block 11/863 within 60 days from the date of service of this order on them.

c. The O.C.S and the OCPD, Thika Police Station, to enforce the above orders.

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

Dated, signed and delivered at Thika this 6th day of December, 2018.

In the absence of the Plaintiff and Defendants

Court Assistant: Diana

O. A ANGOTE

JUDGE

6/12/2018