



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. 403 OF 2012

ANNE WACHUKA NDEIPLAINTIFF

VERSUS

DANIEL WAMALWADEFENDANT

JUDGMENT

1. In his Complaint dated 18th October, 2012, the Plaintiff is seeking for a permanent injunction restraining the Defendant or his servants from ingressing or egressing into a parcel of land known as **Mavoko Town Block 13/105** (*the suit property*).
2. The Plaintiff's claim is premised on the ground that he is the registered proprietor of the suit property having been allocated the land by the Commissioner of Lands.
3. The Defendant's advocate filed a Defence in which he averred that he purchased a parcel of land known as **Mavoko Town Block 20/105** from one Mary Kerubo Monda; that he has been in actual possession of the land since the year 2002 and that he is a stranger to the allegations raised in the Complaint.
4. Although the Defendant's advocate was notified about the hearing of 16th February, 2017, neither the Defendant nor his advocate was in court on that day. The matter proceeded for hearing in their absence.
5. The Plaintiff, PW1, informed the court that she is the registered proprietor of parcel of land number **Mavoko Town Block 13/105**.
6. According to PW1, she acquired the land in 1995 and was later on issued with the Certificate of Lease. PW1 produced in evidence the Certificate of Lease which was issued to her on 5th December, 1995. PW1 also produced an official search which shows that she is the registered owner.
7. It was the evidence of PW1 that although the Defendant promised to vacate the suit property, he has refused to do so; that the Defendant is on the suit land illegally and that he should be evicted from the land.
8. Although the Defendant averred in the Defence that he purchased land known as **Mavoko Town Block 20/105**, he has not put before the court any evidence to prove that allegation.
9. The Defendant did not also produce any evidence to show the connection between the suit land property and land known as Mavoko Town Block 20/105.
10. Considering that the Plaintiff is in possession of a Certificate of Lease which has not been challenged

by the Defendant, and in view of the provisions of Section 27(b) of the Registered Land Act (*repealed*) which provides that the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest, I find and hold that the Plaintiff has proved her case on a balance of probabilities.

11. For those reasons, I allow the Plaintiff's Plaintiff dated 18th October, 2012 in the following terms;

a) A declaration be and is hereby issued that the Plaintiff is the owner of parcel of land known as Mavoko Town Block 13/105.

b) A permanent injunction be and is hereby issued restraining the Defendant, his servants, agents, representatives or assigns from trespassing on parcel of land known as Mavoko Town Block 13/105.

c) An order of eviction against the Defendant be and is hereby granted.

d) An order that the Defendant demolishes all the structures that he has constructed on the parcel of land known as Mavoko Town Block 13/105 be and is hereby granted.

e) The Officer Commanding Station, Athi River Station to supervise the enforcement of the orders herein.

f) The Defendant to pay the costs of the suit.

DATED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE