



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 85 OF 2006**

JUSTUS KILONZI MUTUNGI .....1<sup>ST</sup> PLAINTIFF

KITILO MUTUNGI KAMINA .....2<sup>ND</sup> PLAINTIFF

VERUS

MUTUA KAMINA.....1<sup>ST</sup> DEFENDANT

KIMONDIU KISYANGA .....2<sup>ND</sup> DEFENDANT

**JUDGMENT**

1. In their Complaint dated 6<sup>th</sup> September, 2006, the Plaintiffs averred that they are the registered proprietors of a parcel of land known as Nzau/Kalamba/55 (*the suit land*); that since the year 2006, the Defendants have been trespassing on the land and that the Defendants should be evicted from the suit land.

2. Although the Defendants were served with Summons to Enter Appearance, they neither entered appearance nor filed a Defence.

3. This matter proceeded for formal proof on 28<sup>th</sup> March, 2017.

4. The 1<sup>st</sup> Plaintiff, PW1, informed the court that the Defendants have trespassed on his land; that when he reported the matter to the District Commissioner, the District Commissioner ordered the Defendants to vacate the suit land and that the Defendants have refused to obey the said directive.

5. PW1 produced in evidence the Title Deed in respect of parcel of land number Nzau/Kalamba/55 which was issued to him together with his mother on 3<sup>rd</sup> January, 2006.

6. I have perused the said Title Deed together with the official search.

7. The Title Deed and the official search in respect of parcel of land number Nzau/Kalamba/55 shows that the Plaintiffs were registered as the proprietors of the land on 30<sup>th</sup> January, 2006.

8. Considering that under Section 26(1) of the Land Registration Act, a certificate of title issued by the Registrar upon registration shall be taken by all courts as *prima facie* evidence that the person named as the proprietor of the land is the absolute and indefeasible owner, and in the absence of evidence to show that the Plaintiffs were issued with the Title Deed fraudulently or by mistake, I find and hold that the Plaintiffs have proved their case on a balance of probabilities.

9. For those reasons, I allow the Plaintiffs' Complaint dated 6<sup>th</sup> September, 2006 as follows:

***a. The Defendants be evicted from parcel of land known as Nzau/Kalamba/55 within 90 days from the date of service of the decree of this court on the Defendants.***

***b. The Defendants to pay the costs of the suit.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30<sup>TH</sup> DAY OF JUNE, 2017.**

**O. A. ANGOTE**

**JUDGE**