

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 74 OF 2016

THOMAS MANTHI MWANIA.....PLAINTIFF

VERSUS

MWELU MARTIN KITHUKU.....DEFENDANT

JUDGMENT

1. In his Complaint dated 9th August, 2016, the Plaintiff averred that he is the administrator of the Estate of the late Lazarus Manthi, the legal owner of Plot No. 20 Matuu; that the Defendant has trespassed on the said land and that the purported sub-division of the suit land into two is a fraud.

2. In the prayers, the Plaintiff is seeking for a declaration that the Estate of the late Lazarus Manthi Mwanja is the legal owner of Plot No. 20 Matuu.

3. Although the Defendant was served with the Summons to Enter Appearance, she neither entered appearance nor filed a Defence.

4. The matter proceeded for hearing as undefended on 29th March, 2017.

5. The evidence of PW1 was that she is the legal administrator of the Estate of her late mother; that the suit land is registered in her mother's name and that when she went to check on it, she found the Defendant has encroached on an area measuring 20 x 100 feet.

6. PW1 produced in evidence the receipts which shows the payments that her late mother made to the Town Council of Matuu in respect to Plot No. 20 and the Minutes of the said Council confirming that Plot No. 20 had been allocated to Ms. Ndungwa Manthi.

7. The evidence before this court shows that indeed the Town Council of Matuu allocated to the Plaintiff's mother the suit land. The Defendant did not produce any evidence to controvert the Plaintiff's evidence.

8. In the circumstances, I am satisfied that the Plaintiff has proved her case on a balance of probabilities.

9. For those reasons, I allow the Plaintiff's Complaint dated 9th August, 2016 as follows:

a. An order be and is hereby issued ordering the Defendant to render to the Plaintiff vacant possession Plot No. 20 in Matuu and to demolish at her own cost all the structures erected on the said land within 30 days of the date of this Judgment.

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

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE