

REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT OF KENYA AT KAKAMEGA

ELC NO 2 OF 2013

JOHN MADEGWA LUKOYE..... PLAINTIFF

VERSUS

JOHNSTONE AMUTAI1ST DEFENDANT

PETER AMUTAI.....2ND DEFENDANT

JUDGMENT

PWI, The plaintiff is a registered owner of land parcel title No. Kakamega/Shikulu/200 measuring 0.41HA. The defendants without colour of right have occupied the same parcel of land against the wish of the plaintiff. The plaintiff's claim against the defendants by themselves family members, servants and or agents is for eviction from land parcel title number Kakamega/Shikulu/200. The plaintiff prays for judgment against the defendant for:-

(a) Eviction.

(b) Costs of this suit.

DWI, the 2nd defendant avers that the 1st defendant died on 29/3/2007 and this suit is thereby fatally defective for having been institute against a deceased person and notice of preliminary objection shall be raised thereto, notice of which is hereby given. The 2nd defendant is known as LEUNCE MUSASIA as well as PETER AMUTAI. The 2nd defendant is a stranger to the allegations as he does not live in the said suit premises. The 2nd defendant denies having by himself, agents and/or employees trespassed onto the plaintiff's land, denies that the plaintiff I entitled to the prayers sought and he is put to strict proof thereof. The 2nd defendant avers that the plaintiff has no any reasonable cause of action against him and put the plaintiff to strict proof thereof. The 2nd defendant prays that the plaintiff's suit be dismissed with costs.

This court has considered both the plaintiff's and the defendant's case. It is a finding of fact that, PWI, the plaintiff is a registered owner of land parcel title No. Kakamega/Shikulu/200 measuring 0.41HA. It is not disputed that the 1st defendant died on 29/3/2007 and this suit is thereby fatally defective for having been institute against a deceased. It is also not disputed that the 2nd defendant who is known as LEUNCE MUSASIA as well as PETER AMUTAI is a stranger to the allegations as he does not live in the said suit premises and is not the trespasser. I find that the plaintiff's case is brought against, one a deceased person (the 1st defendant) and two against a wrong party (the 2nd defendant). This case has no merit and I dismiss it with costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 20TH DAY OF JUNE 2017.

N.A. MATHEKA

JUDGE