



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 57 OF 2016

DAVID MAJANI ALWAHUYA.....PLAINTIFF

VERSUS

MARTIN MAKOKHA *alias* MACHO NNE.....DEFENDANT

J U D G M E N T

1. The plaintiff filed this suit on **21/3/2016**. In the plaint dated **16/3/2016**, the plaintiff claimed that he is the registered owner of Title No. **Trans-Nzoia/Maridadi/173** measuring approximately **4.0 Hectares** which the defendant is allegedly occupying illegally.
2. There is no defence filed in this suit despite service of summons upon the defendant as is evidenced by the affidavit of service of **Raphael Nyongesa Simiyu** sworn on **7/4/2016**.
3. A request for judgement in default of appearance and defence was lodged on **2/6/2016**. This matter finally came up for formal proof on **11/7/2017** when the plaintiff alone testified. The plaintiff produced the original title to the land. A copy thereof was compared to with the original and marked "**P. Exhibit 1**" while the original was returned to the plaintiff. A certified copy of an official search certificate in respect of the suitland was produced as "**P. Exhibit 2**". The plaintiff also produced a letter dated **14/9/2015** from the County Surveyor, Trans-Nzoia to the Chief, Kwanza Location. The letter informs the Chief that surveyors from the County Surveyor's office would be visiting the land known as **Maridadi/174** on Tuesday **15th September, 2015** to demarcate the boundaries of the said plot. It requests all parties to attend. The letter is copied to the plaintiff. It was produced as marked "**P. Exhibit 3**"
4. The fourth document produced by the plaintiff and marked as "**P. Exhibit 4**" is a surveyor's report dated **18/3/2016**. It confirms that the surveyor visited the site as scheduled on **15/9/2015** in the presence of among other persons, the plaintiff and the defendant. It confirms that the beacons had been removed. The surveyors re-established the positions of the beacons and found that the defendant was residing on the suitland and that the suitland belongs to the plaintiff. The land is **10 acres** and was under a maize plantation.
5. At the hearing the plaintiff averred that the defendant was in occupation of one acre. The plaintiff testified that if he were leasing the land under the defendant's occupation he would have earned **Ksh.8,000/=** per year. He prayed for an award of damages based on that sum from the year **2007** to date which is a period of ten years. The plaintiff also prayed for costs of the suit.
6. **Section 25** of the **Land Registration Act** provides that the rights of a proprietor shall not be liable to

be defeated except as provided in the Act and shall be held by the proprietor together with all privileges and appurtenances belonging thereto free from all other interests and claims save those shown on the register and liabilities interests and rights that affect the land and are declared by **Section 28** of the Act.

7. As indicated earlier in this judgement the plaintiff's suit is unopposed. The defendant has therefore justified before this court as he was required to by summons his occupation of the land registered in the plaintiff's name. I find that the plaintiff has proved his claim on a balance of probabilities. He is entitled to judgement. Consequently, I issue judgement in favour of the plaintiff against the defendant in the following terms:-

i. An eviction order shall issue against the defendant ordering his eviction together with his family members and servants and anyone else claiming through him, from LR. No. Trans-Nzoia/Maridadi/174. The provisions of Section 152 E and Section 152G of the Land Act (Act No 6 Of 2012) shall be complied with in the eviction of the defendant.

ii. The plaintiff is hereby awarded *mesne profits* in the aggregate of Kshs.80,000/= for the defendant's occupation of the land from the year 2007 to the year 2017. The defendant is also liable to pay *mense profits* of Kshs.8,000/= per year for every other year of occupation of the land after the year 2017 is over.

iii. The plaintiff is hereby awarded the costs of this suit.

It is so ordered.

Dated, signed and delivered at Kitale on this **31st** day of **July, 2017**.

MWANGI NJOROGE

JUDGE

In presence of:

Mr. Samba for the Plaintiff.

Court Assistant – Isabellah.

MWANGI NJOROGE

JUDGE

31/07/2017.