

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 227 OF 2013

MIRICHU BUILDING COMPANY.....PLAINTIFF

= VERSUS =

JOSEPH LOGOHE AMWAYI.....DEFENDANT

JUDGEMENT

1. The Plaintiff is a limited liability company incorporated under the Companies Act. The Plaintiff hereinafter referred to as “the company” acquired a plot measuring 50x50 Ft from a company called Umagara Winyonere Company. The plot (suitland) was comprised in LR No. 8469/4. The Company was given plot certificate for plot No. 310.

2. In or around 2008, the defendant trespassed on to the suitland and constructed a residential house thereon. The company demanded that he vacates the land but he declined to do so prompting the company to file the present suit.

3. The defendant was duly served through substituted service but he neither entered appearance nor filed defence. The company through one of its directors testified that the company acquired the suitland in 1984 from Umagara Winyonere Company, a land buying company. The company was given plot No.310 and a certificate issued to it. In 2008, the defendant trespassed to the suitland and put up a building on it. Demands were made to the defendant to vacate the land but he was adamant. He did not want to move out.

4. The Company produced a plot certificate as exhibit 2. Though the certificate is in respect of plot No.320 I notice that in the bundle of documents filed in the file, the plot certificate is for plot No.310. There may have been confusion in production of the certificate but it is clear that the Plaintiff’s claim is based on plot 310 and the filed documents relate to plot No.310. The company produced demand letters which show that the defendant had been notified that he had been allocated plot No.1229 but instead went on to occupy plot 310 which is the suitland. The evidence by the company remains uncontroverted. I find that the company has proved on a balance of probabilities that it is the owner of the suitland. As such, the defendant should not remain on the same. I therefore allow the company’s claim in terms of prayer (a) of the Plaint. There is no basis upon which mesne profits can be granted. The prayer for mesne profits is rejected. The company shall have costs of this suit.

Dated, Signed and delivered at **Nairobi** on this **26th** day of **September, 2017**.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date and time of delivery of Judgement.

Court Assistant: Hilda

E.O.OBAGA

JUDGE