



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 159 OF 2014

MUSILI KIVINGO1ST PLAINTIFF

KITHUKA MUSINGILA2ND PLAINTIFF

VERSUS

KITILI KILONZODEFENDANT

JUDGMENT

1. In their Plaint dated 16th September, 2014, the Plaintiffs are seeking for an order of eviction against the Defendant.
2. The Plaintiffs have averred that the 1st Plaintiff was allocated land located in Mbakoni village, Mongoni Sub-location, Maluma location in the year 1957 by the then sub-chief; that he later on sold part of the land to three (3) people on or about 16th September, 1982 and that the 2nd Plaintiff was one of the persons who purchased a portion of the said land for Kshs. 12,000.
3. The Plaintiffs have alleged that in the year 1988, the Defendant invaded the Plaintiffs' land and that the 1st Plaintiff sued him in Kitui SPMCC No. 3 of 2000; that the matter was referred to the Land Dispute Tribunal and that the Tribunal decided the matter in favour of the 1st Plaintiff.
4. Despite the Tribunal's decision, the Plaintiffs have averred that the Defendant is still occupying the suit land.
5. Although the Defendant was served with the Summons to Enter Appearance and the Plaint, he neither entered appearance nor filed a Defence.
6. The matter proceeded for hearing on 12th June, 2017. The 1st Plaintiff, PW1, restated in his evidence the averments that are contained in the Plaint, which I have summarized above.
7. PW1 produced in evidence the proceedings of the Ikutha Land Dispute Tribunal L. 3/2000 and the proceedings from Kitui SPMCC No. 3 of 2000 adopting the award of the Tribunal.
8. The proceedings of the Tribunal shows that the 1st Plaintiff herein sued the Defendant in respect to the suit land.
9. After hearing witnesses and visiting the *locus quo*, the Tribunal found that the suit land was acquired by the 1st Plaintiff.

10. The award by the Tribunal was adopted as an order of the court in Kitui SPMCC No. 3 of 2000.
11. The decision of the Tribunal has never been set aside or varied. Indeed, the Defendant did not rebut the evidence of the 1st Plaintiff at all.
12. In the circumstances, I find and hold that the Plaintiffs have proved their case on a balance of probabilities.
13. I therefore allow the Plaintiffs' application dated 16th September, 2014 in the following terms:
- a. An order of eviction be and is hereby issued against the Defendant from the parcel of land situated in Mbakoni village, Mongoni Sub-location within sixty (60) days from the date that this Judgment and Decree is served on the Defendant.*
 - b. The Officer Commanding Station, Mutomo, to enforce the above order.*
 - c. The Defendant to pay the costs of the suit.*

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O. A. ANGOTE

JUDGE