

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC CAUSE NO. 815 OF 2016

OMEGA KARANDI.....PLAINTIFF

-VERSUS-

JOHN OBONYO ONYAMO.....1ST DEFENDANT

JEREMIA O.OBOKO.....2ND DEFENDANT

DANIEL DESIRA KABINGA.....3RD DEFENDANT

JAMES OMANWA MORURI.....4TH DEFENDANT

BURUCHA JOHN OMEGO.....5TH DEFENDANT

JUDGEMENT

The Plaintiff commenced the suit herein by way of a plaint dated 26th April, 2012. The Plaintiff contends that at material times to the suit herein he was the sole registered owner of a parcel of land known as **NORTH MUGIRANGO/MAGWAGWA 1/2139** and that the 1st to 4th Defendants without any colour of right unlawfully and illegally entered into the Plaintiff's said parcel of land and demarcated the same into several portions amongst themselves, occupied the same and constructed permanent structures and cultivated crops to his detriment.

The Plaintiff further avers that he did not give the 5th Defendant or his son any legal authority to sale any part of the said land to the other Defendants and despite several attempts by the Provincial Administration the Defendants have refused to move from the suit land.

The Plaintiff by the leave of the court filed an amended plaint on 6th November, 2012 reiterating the above save for amending the land parcel No. from **NORTH MUGIRANGO/MAGWAGWA 1/2139** to **NORTH MUGIRANGO/MAGWAGWA 1/3021**.

The Defendants despite several reminders did not enter appearance and when the suit came up for hearing the same proceeded in the absence of the Defendants who opted not to participate for reasons unknown to the court.

In his evidence in chief the plaintiff stated that he is the owner of the parcel of land known as **NORTH MUGIRANGO/MAGWAGWA 1/2139**. The Plaintiff contends that the Defendants built structures, planted trees and cultivated on the suit land. The Plaintiff produced a certificate of title showing the land is registered in his name. The Plaintiff further produced photographs of the suit land showing structures thereon. The Plaintiff also called one **FRANCIS NATAYA SUGUTA** who is his neighbor and said that the Defendants invaded the plaintiff's land and they have built structures on the land and have tea bushes.

I have considered the pleadings that were filed in court and the testimony of the witness. The plaintiff has tendered a title deed in respect of the suit land that shows that indeed the property is registered in his name. A certificate of title is the prima facie evidence of ownership of land. The Defendants having failed to take part in the hearing have not been able to rebut the evidence and the testimony of the Plaintiff that remains uncontested and unchallenged.

The upshot of the above is that the Plaintiff has proved his case on a balance of probabilities and I thus enter Judgement for the Plaintiff as prayed. However on the issue of eviction, I direct that the Defendant do vacate the suit land within 90 days from the date of this Judgement failing which the Plaintiff will carry out an eviction in strict compliance with the provisions of Section 156 (a) to (g) of the Land Act (2016) as amended.

It is so ordered.

Dated, Signed and Delivered in open court at **KISII** on this **19th** day of **October, 2017**

Mohammed Noor Kullow

Judge

In the presence of:-