



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.13 of 2015
MICHAEL OTIENO WAGUNDE.....PLAINTIFF
VERSUS
MORRIS OLWALDEFENDANT

JUDGMENT

1. **Michael Otieno Wagude**, the Plaintiff, prays for eviction of **Morris Olwal**, the Defendant, from Land parcel **Kisumu/Dago/566**, costs and interest vide the plaint dated 15th May 2015. The Plaintiff avers that he inherited the said land from his late father and has been the registered proprietor of the same at all material times. That the Defendant, who own a separate land, trespassed onto the suit land and occupied a portion thereof, from which he now seeks that he be evicted from. The Plaintiff testified as PW1 and produced a copy of the title deed, certificate of official search, grant and certificate of confirmation of grant in Kisumu H.C. Succession No.760 of 2014.

2. The Defendant was duly served with the suit documents but did not file any papers.

3. The following are the issues for the determination by the court;

- a) Whether the Plaintiff is the registered proprietor of the suit land.
- b) Whether the Plaintiff is entitled to the order of eviction sought.
- c) Who pays the costs.

4. The court has considered the pleadings filed by the Plaintiff, the oral and documentary evidence tendered, and come to the following findings:

a) That from the copy of the green card for parcel East Kisumu/Dago/566 availed to the court, the land was first registered on the 23rd October 1973 in the name of **Marikus Wagunde**. That the title to the land was at entry number 4 transferred to Michael Otieno Wagunde, the Plaintiff, on the 5th December 2014 and title deed issued on the strength of the certificate of confirmation of grant issued in Kisumu H.C. Succession cause No.560 of 2014.

b) That though the copy of the grant and certificate of confirmation of grant availed to the court show that they were issued in Kisumu H.C. Succession Cause No.760 of 2014 and not 560 of 2014 that is cited in the green card, the court is satisfied that the certificate of confirmation of grant exhibited confirms what the Plaintiff told the court, that he inherited suit land through the succession court order.

c) That in view of the findings in (a) and (b) above, the court finds that the Plaintiff is the absolute and indefeasible owner of the suit land and that no challenge to his title has been mounted as provided for under **Article 40** of the constitution or **Section 26** of the Land Registration Act No.3 of 2012.

d) That the Plaintiff as the absolute and indefeasible owner of the said land is entitled to the rights and privileges set out under **Section 24 and 25** of the Land Registration Act, including quiet possession, which he cannot fully enjoy when the Defendant occupies a portion thereof.

5. That flowing from the foregoing, the court finds that the Plaintiff has proved his case against the Defendant on a balance of probabilities. The court therefore enters judgment for the Plaintiff against the Defendant as follows:

a) That the Defendant do give the Plaintiff vacant possession of the land parcel **Kisumu/Dago/566** in 90 (ninety) days and in default he be forcefully evicted.

b) That this order be extracted and served on the Defendant within seven (7) days for his attention and compliance.

c) That the Defendant do pay the Plaintiff's costs.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 18TH DAY OF OCTOBER 2017

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr. Okello for Ayayo for Plaintiff

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

18/10/2017

18/10/2017

S.M. Kibunja judge

Oyugi court Assistant

Parties absent

Mr. Okello for Ayayo for Plaintiff

The Defendant is in person and absent.

Order: Judgment dated and delivered in open court in presence of Mr. Okello for Ayayo for the Plaintiff.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

18/10/2017