



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 10 OF 2014**

**NATHAN MANONO KEGORI.....PLAINTIFF**

**VERSUS**

**TIMINA MUTEISI.....DEFENDANT**

**JUDGEMENT**

The plaintiff is the Registered Proprietor of Land Parcel No. N. MARAGOLI/KEGONDI/898 which he purchased from one Efetha Kemoli in the year 2006. In the year 2007, while the plaintiff was away working in Nakuru, the defendant, without any colour of right encroached the plaintiff's land and erected structures and continues to stay thereon. The plaintiff states that he has no dealings and/or transactions with the defendant in respect of the suit land, that the defendant is a stranger to him. The defendant has refused and/or neglected to vacate the said suit land No. N. MARAGOLI/KEGONDI/898 in spite of demands by the plaintiff. The plaintiff prays for eviction of the defendant and/or her licensees from the Land Parcel No. N. MARAGOLI/KEGONDI/898.

PW1, the plaintiff testified that, he was the only surviving son of the late Peter Kegori Manono who died in 1994. That before his death, his mother had already died. After the death of his mother, his father married Timina Muteisi. By then, he had purchased another land elsewhere and was working in Nakuru. He bought land parcel N. MARAGOLI/KEGONDI/898 MEASURING 0.34 Hectares from Efetha Kemoli. Timina Muteisi was staying alone in the matrimonial home. That without knowing, she sold the whole matrimonial home and re-married to a retired teacher. After staying with the retired teacher for 11 years, she divorced him and while he was in Nakuru working, she came and encroached on his land that he had purchased. That she built her house in front of his house. PW1 reported the matter to the administration and no action has taken place. That he now seeks the court's orders to evict her from my piece of land.

Interlocutory judgement was entered on the 6<sup>th</sup> May 2014 and the matter came up for formal proof. This court has carefully considered the plaintiff's case and the submissions therein. The plaintiff relied on the case of Kasarani Mall Ltd v Daniel Otieno Miganga & 3 Others (2017) eKLR. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

***“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”***

Section 26 (1) of the Land Registration Act states as follows:

***“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except***

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- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or***
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

This court in considering this matter referred to the case of **Elijah Makeri Nyangw’ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR** where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. **Hon Justice Munyao Sila** in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

**-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.**

Looking at the facts of this case it is not disputed that the plaintiff bought land parcel N. MARAGOLI/KEGONDI/898 MEASURING 0.34 Hectares from Efetha Kemoli and is the registered proprietor (PEx1,2 &3 is the green card, serach and title deed). The defendant sold her matrimonial home and got re-married to a retired teacher. After staying with the retired teacher for 11 years, she divorced him. In the year 2007, while the plaintiff was away working in Nakuru, the defendant, without any colour of right encroached the plaintiff’s land and erected structures and continues to stay thereon. The plaintiff states that he has no dealings and/or transactions with the defendant in respect of the suit land, that the defendant is a stranger to him. The defendant has refused and/or neglected to vacate the said suit land No. N. MARAGOLI/KEGONDI/898 in spite of demands by the plaintiff. The plaintiff has produced documentary evidence to show and prove ownership of the said land registration No. N. MARAGOLI/KEGONDI/898. The defendant has tendered no evidence to rebut this. I therefore find the plaintiff has proved his case on a balance of probabilities and make the following orders;

1. The defendant is given six (6) months to vacate and in default an eviction order to issue forthwith to her to evict her from the suit land L.R. No. N. MARAGOLI/KEGONDI/898
2. Cost of this suit to the plaintiff.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 12<sup>TH</sup> DAY OF OCTOBER 2017.**

**N.A. MATHEKA**

**JUDGE**