



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC CASE NO. 28 OF 2013**

**HERMAN MUSASIA MADOLA.....PLAINTIFF**

**VERSUS**

**PATRICK ONYIRI SAKA.....DEFENDANT**

**JUDGMENT**

1. **Herman Musasia Madola**, the Plaintiff, sued **Patrick Onyiri Saka**, the Defendant, seeking to have the Defendant enjoined from interfering with Plaintiff's quiet and peaceful possession of land parcel **Kisumu/Kadero Got Nyabondo/310**, the suit land. He also prays for eviction and costs. The Plaintiff avers that he is the registered proprietor of the suit land and that the Defendant trespassed onto it in 2012 and erected a house without his permission.

2. The Defendant was duly served with the summons to enter appearance but did not file any defence. Further, the Defendant attended court on various occasions and engaged counsel who came on record vide the notice of appointment dated 16<sup>th</sup> September 2016 and filed in court on the 21<sup>st</sup> September 2016.

3. The hearing took place on the 21<sup>st</sup> March 2017 with the Plaintiff testifying as PW1. He also called Julius Agumba Lwande, John Ogalo Lwande, Lyimony Kagai Imboga and Joseph Madola Musasia who testified as PW2 to PW5 respectively and were all cross-examined by Mr. Oguso, advocate for the Defendant. That after the Plaintiff's closed his case, the counsel for the Defendant requested for time to file written submissions. The court gave both sides 30 days to file and exchange submissions. That when the matter came up for mention on the 19<sup>th</sup> September 2017, the Defendant requested for adjournment to the month of December to file his submission. The court noted that the Plaintiff had filed his submissions on the 13<sup>th</sup> April 2017 and therefore the Defendant had had sufficient time to file his but had not done so. The court declined to allow the adjournment and fixed the judgment for today.

4. The following are the issues for the court's determination;

- a) Whether the Plaintiff is the absolute and indefeasible owner of the suit land.
- b) Whether the Defendant has trespassed onto the suit land by establishing a house onto it.
- c) What orders to issue.

5. The court has carefully considered the pleadings filed by the Plaintiff, oral evidence presented and submissions by the Plaintiff and come to the following determinations;

a) That from the documentary evidence in the form of copy of title deed and certificate of official search in respect of **Kisumu/Kadero Got Nyabondo/310**, it is clear the land was registered in the name of **Herman Musasia Madola**, the Plaintiff, on 24<sup>th</sup> June 1996.

b) That the Plaintiff's testimony in court clearly explains how he acquired the suit land from one Joseph Apiyo Ndware. That evidence is confirmed or corroborated by the testimonies of PW2, PW3 and PW4 who are relatives and neighbours to Joseph Ndware.

c) That the evidence adduced by PW1 to PW4 confirms that the Defendant has been carrying out activities on the suit land while there is no evidence that he had the permission of the owner, the Plaintiff, to do so. That accordingly the Plaintiff has proved on a balance of probabilities that the Defendant has without any colour of right and his permission trespassed onto the suit land. The Plaintiff as the legal owner of the said land deserves the orders sought.

6. That flowing from the foregoing the court finds that the Plaintiff has proved his claim against the Defendant and judgment is hereby entered in his favour in the following terms;

a) That the Defendant do vacate from land parcel **Kisumu/Kadero Got Nyabondo/310** and give vacant possession to the Plaintiff in 90 (ninety) days.

b) That should the Defendant decline to give vacant possession as ordered in (a) above, eviction order to issue.

c) That upon the Defendant giving vacant possession of the suit land, or being evicted from therefrom, he is to remain permanently injured by himself, his agents servants and or employees from interfering with the Plaintiff quiet and peaceful possession of the suit land.

d) The Defendant do pay costs of this suit.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 22<sup>ND</sup> DAY OF NOVEMBER 2017

In presence of;

Plaintiff Present

Defendant Present

Counsel None

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**22/11/2017**

22/11/2017

S.M. Kibunja Judge

Oyugi court assistant

Plaintiff present

Defendant present

My advocate has gone to another court.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**22/11/2017**

Court: Judgment dated and delivered in open court in presence of both parties.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**22/11/2017**