



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**

**ELC NO. 12 OF 2017**

**JAMES KATUA TIMOTHY -----PLAINTIFF**

**VERSUS**

**MUTUNGA MATATA KITUMA ----- DEFENDANT**

**JUDGEMENT**

1. **James Katua Timothy** who is the plaintiff herein is a cashier employed by **Nakumatt Supermarket**. He says that he is the owner of plot number **1978** situated at **Emali Trading Centre**. He has sued **Mutunga Matata Kituma** the defendant herein for trespassing upon the said plot number 1978 .

2. By his plaint dated **10/2/2017** and filed in court on **20/2/2017** the plaintiff prays for judgement against the defendant for orders:-

- a) **A declaration that plot no 1978 situated at Emali Town Centre is the property of the plaintiff.**
- b) **A permanent injunction restraining the defendant either by himself, his servants, relatives and/or agents from encroaching on, trespassing on, building on heaping soil on alienating and/or interfering in any manner with the plaintiff's peaceful possession and/or occupation of Plot No. 1978 situated at Emali Town Centre.**
- c) **A demolition order**
- d) **Costs and interest of the suit**
- e) **Any other further relief that the honourable court may deem fit and just.**

3. The defendant was served on **10/3/2017** with summons to enter appearance and to file his defence as can be seen from the affidavit of service dated **3/5/2017** and filed on court on **8/5/2017**. Consequently the court ordered that this matter proceeds to formal proof after the defendant failed to enter appearance and to file his defence.

4. When the matter came up for hearing on **20/9/2017** the plaintiff adopted his statement which he recorded on the **10/2/2017**. In his evidence in chief, the plaintiff told the court that he bought the plot in question from **John Kispan** vide a sale agreement dated **5/11/2014 (PEXno.1)**. He went on to say that he is yet to transfer the plot into his name due to lack of funds and as such, the plot is still registered in **John Kispan(PW1)** as can be seen from the certificate of search produced as *Pex No. 2*. He went on to produce an allotment letter in the name of **J.K Yiankaso** as *PEX no. 3*.

5. It was his evidence that when he found the defendant having trespassed into his land, he saw the ward administrator who issued him with the letter dated **15/9/2015** (*PEX no.4*) and addressed to the defendant. He went on to say that he served the defendant with a demand letter to vacate the plot (*PEX no .5*) and to remove his illegal building and building materials from the plot but he did not respond.

6. The plaintiff's evidence is supported by the evidence on **John Kispan Yiankaso** (*PW1*) who told the court that the plot that he sold to plaintiff was allocated to him by **Olkejuado County Council** on **17/3/2016**. The witness went on to say that the site was thereafter identified to him by the surveyor of the County Council on the **22/5/2011** who thereafter signed and validated the sale.

7. That on the **5/11/2014** he and the plaintiff entered into an agreement upon which he took the plaintiff to the site where he identified the beacons to him. It was his evidence that he urged the plaintiff to build but he later got a complaint from the latter that the defendant herein had laid a claim onto the plot. He said that he met **Mutungu** and also the administrator who ruled in his favour. He revealed that even though the plot is registered in his name, the plot belongs to the plaintiff.

8. The plaintiff's counsel filed her written submissions on the **19/10/2017**. She urged the court to rule in favour of the plaintiff since he had proved his case on a balance of probability.

9. Having read the evidence on record and the submissions filed, I have no doubt that **plot number 1978** belongs to the plaintiff even though it is registered in the name of **Kispan**(*PW1*). I am in agreement with plaintiff's counsel that the plaintiff has proved his case against the defendant on a balance of probabilities. In the circumstances, I hereby proceed to enter judgement for him and against the defendants as follows:-

**a) Plot no 1978 situated at Emali Town Centre be and is hereby the property of the plaintiff.**

**b) A permanent injunction be and is hereby issued restraining the defendant either by himself, his servants, relatives and/or agents from encroaching on, trespassing on, building on heaping soil on alienating and/or interfering in any manner with the plaintiff's peaceful possession and/or occupation of Plot No. 1978 situated at Emali Town Centre.**

**c) An order of demolition be and is hereby allowed.**

**d) Costs and interest of the suit**

It is so ordered.

**Signed, Dated and Delivered this 7<sup>th</sup> day of November, 2017**

**MBOGO C.G**

**JUDGE**

Mr. Hassan holding brief for Mrs. Nzao for the plaintiff

Mr. Kwemboi Court Assistant

Plaintiff present

**MBOGO C.G**

**JUDGE**

**7/11/2017**