



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 90 OF 2009**

**CHRISTOPHER WANYAMA WEKESA.....PLAINTIFF**

**VERSUS**

**ANTHONY WESAKULILA & 19 OTHERS.....DEFENDANTS**

**JUDGMENT**

1. The plaintiff filed this suit on 7/7/2009. He claimed to be the registered proprietor of Title No. **Kiminini/Kinyoro Block 3/Matisi/687** measuring **0.828 Ha.** or thereabouts, on which the defendants trespassed sometime between **2000 - 2003** and erected structures. He avers that the defendants have refused to vacate the land despite demand. The plaintiff therefore prays for an order of eviction of the defendants from the suit land and costs of the suit.

2. The 7<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> defendants filed defence on 13/8/2009, claiming that if the plaintiff was the registered owner of the suit land, he obtained the title thereto by way of fraud. They set out the particulars of alleged fraud at **paragraph 3** of their defence. Fraud and the particulars of fraud are denied by the plaintiff in the reply to defence.

3. The suit proceeded to hearing on 4/12/2014. Only **PW1** the plaintiff testified. The counsel for the 7<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> defendants was absent. The other defendants never appeared then. The plaintiff closed his case. The first judgment in this case was delivered on 26/1/2015. That judgment was subsequently set aside by consent of the parties on 16/9/2015. The case was set down for hearing on 28/3/2016 on which date it never proceeded. The same thing happened on 12/9/2016, on 31/1/2017, on 2/3/2017 and on 18/4/2017. The suit finally proceeded to a fresh hearing on 2/10/2017. **PW1** who is the plaintiff and **PW2** testified.

4. The plaintiff produced the original title to the suit land. It is registered in his name. He stated that the defendants have been on the land from year 2000 and have built houses and in addition they farm on the land. The plaintiff averred that the land was transferred to him by his father when he was alive and that there was therefore no need for succession proceedings. The plaintiff avers that his father had shared out his land amongst his wives whereupon his mother got 2 acres when she was still alive. The plaintiff and **PW2** who is his elder brother testified that the defendants had sold their entitlements which they had gotten following the sharing out of their father's assets to his wives.

5. The defendants were not present to cross-examine the plaintiff and his witness. His evidence is therefore not controverted.

I find that the plaintiff has proved his case against the defendants on a balance of probabilities. I therefore issue an order of eviction against all the defendants from all that land known as

**Kiminini/Kinyoro Block 3/Matisi/687.** The costs of the suit shall be borne by the defendants jointly and severally.

Dated, signed and delivered at Kitale on this **20<sup>th</sup>** day of **December, 2017.**

**MWANGI NJOROGE**

**JUDGE**

**20/12/2017**

Before - Mwangi Njoroge -Judge

Court Assistant - Isabellah

Ms. Arunga for the plaintiff

N/A for the defendant

**COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**20/12/2017**