



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 38 OF 2015**

SAMUEL KING'ORI KAIRU.....PLAINTIFF

VERSUS

FRANCIS MWANGI WAWERU.....DEFENDANT

**JUDGMENT**

The plaintiff filed this suit on 8<sup>th</sup> April 2015 seeking judgment against the defendant in the following terms:-

- a. ***That the defendant be ordered to remove the said semi-permanent home forthwith and cease any further trespass on land parcel MAKUYU/KIMORORI/BLOCK 3/1438.***
- b. ***Costs of the suit.***
- c. ***Any further relief the Court may deem fit to grant.***

The suit was based on the claim that whereas the plaintiff is the registered owner of all that parcel of land known as MAKUYU/KIMORORI/BLOCK 3/1438 comprising 0.2025 Hectares (herein the suit land), the defendant is in illegal occupation of the same and has built thereon a semi-permanent structure and occasionally harvests trees on the said land without the authority of the plaintiff and is therefore a trespasser and although a notice was issued to him on 13<sup>th</sup> January 2015, the defendant has ignored it thus necessitating this suit.

Though served with the plaint and summons on 15<sup>th</sup> April 2015, the defendant did not enter appearance or file defence and on 20<sup>th</sup> May 2015, interlocutory judgment was entered against him. The matter was then listed for formal proof before me on 17<sup>th</sup> March 2016.

The plaintiff testified that he bought the suit land from the defendant's mother for Ksh. 2.8 million and the same was transferred to him. He referred the Court to the sale agreement and the certificate of search filed together with his plaint. However, he has never occupied that suit land because the defendant has illegally moved into it, put up a semi-permanent structure and refused to vacate even after a notice was issued to him on 13<sup>th</sup> January 2015. He therefore filed this suit.

From the certificate of official search with respect to the suit land herein, it is clear that the same is registered in the names of the plaintiff. That registration is under the now **repealed Registered Land Act, Section 27(a) of that Act** provided as follows:-

***“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 24(a) of the new Land Registration Act 2012** is in exactly the same words and provides:-

***“The registration of a person as the proprietor of land shall vest on that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”***

Being the registered proprietor of the suit land, the plaintiff is entitled to evict all persons who trespass thereon. The plaintiff’s un-controverted evidence is that the plaintiff has trespassed onto the suit land by putting up a semi-permanent house thereon. That is of course a blatant violation of the plaintiff’s rights to own property which is protected under **Article 40 of the Constitution**. Believing the plaintiff’s un-controverted evidence as I do, I am satisfied that he has proved his case against the defendant as required in law.

Ultimately therefore, I enter judgment for the plaintiff as prayed in paragraph 8(a) of his plaint. As the suit was not defended, there shall be no order as to costs.

**B.N. OLAO**

**JUDGE**

**22<sup>ND</sup> APRIL, 2016**

Judgment dated, signed and delivered in open Court this 22<sup>nd</sup> day of April, 2016.

Mr. Macharia for Mr. Kamau for Plaintiff present

No appearance by Defendant

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**22<sup>ND</sup> APRIL, 2016**