



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT KISII**

**CASE NO. 81 OF 2013**

**ELIAKIM JAOKO AWITI.....PLAINTIFF**

**VERSUS**

**BENARD ISABOKE MBAKA.....1<sup>ST</sup> DEFENDANT**

**GREGORY AGWATA NDUBI.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff brought the instant suit against the defendants vide a plaint dated 21<sup>st</sup> February 2013 filed in court on the same date. The plaintiff claims that he is the registered owner of land parcel number **Suna East/Wasweta I/15695** measuring about 1.781 hectares (hereinafter referred to as “the suit property”). The plaintiff further avers that the defendants have unlawfully trespassed onto the suit property and have engaged in acts of wastage to the plaintiff’s prejudice.
2. The plaintiff by the plaint prays for judgment against the defendants jointly and severally for:-

- a. **An eviction order against the defendants from land parcel Suna East/Wasweta I/15695.**
- b. **A permanent injunction restraining the defendants from in any way however interfering with the plaintiff’s lawful occupation and/or ownership of land parcel Suna East/Wasweta I/15695.**
- c. **Costs of the suit.**

3. The defendants were served with the summons to enter appearance as per the affidavit of service sworn by one Vitalis Onyango Akuku on 19<sup>th</sup> June 2013 and filed in court on 20<sup>th</sup> June 2013. The defendants as per the record did not enter any appearance and/or file any defence. The court granted an interlocutory order of injunction against the defendants pursuant to the plaintiff’s application dated 21<sup>st</sup> February 2013 filed simultaneously with the plaint. The order of injunction was in the following terms:-

**“That the defendants their agents, servants and/or whoever is acting on their instructions are restrained from trespassing, wasting, alienating, disposing off or in any way interfering with land parcel number Suna East/Wasweta I/15695 pending hearing and final determination of the suit herein.”**

4. The record shows the defendants were served with the court order given on 3<sup>rd</sup> July 2013 and issued by the court on 24<sup>th</sup> July 2013, as per the affidavit of service sworn by Vitalis Onyango Akumu on 26<sup>th</sup> September 2013. The court gave directions for the suit to be listed for hearing at the registry and the defendants to be served with a hearing notice.
5. On 8<sup>th</sup> February 2016 the suit was listed before me for hearing but did not proceed as the

plaintiff's advocate was absent. I directed the suit to be fixed for hearing on 27<sup>th</sup> April, 2016 and the defendants to be served with a hearing notice. On the 27<sup>th</sup> April 2016 the matter was once again listed before me for hearing when the plaintiff and his advocate attended. The defendants though served with a hearing notice did not attend and I allowed the plaintiff to proceed with the hearing ex parte.

6. The plaintiff testified as the sole witness in support of his case. The plaintiff reiterated the contents of the plaint and asserted that he is the registered owner of land parcel **Suna East/Wasweta I/15695**. The plaintiff relied on the copy of the title deed for land parcel **Suna East/Wasweta I/15695** issued in his name on 11<sup>th</sup> June 2012 and included in the plaintiff's bundle of documents to demonstrate ownership of the suit property. The plaintiff as per the abstract of title (green card) of land parcel **Suna East/Wasweta I/12978** which is annexed to the plaintiff's bundle of documents was the owner of land parcel 12879 which was subdivided. The suit property as per the annexed copy of the title was a resultant subdivision from land parcel number 12978.
7. The plaintiff in his evidence testified that the defendants during the month of August 2011 and again April 2012 unlawfully entered into his parcel of land 15695 and built temporary structures and started cultivating apart thereof. The plaintiff caused a demand letter to be sent to the defendants by his advocates demanding that the defendants vacate and remove the temporary structures from the suit land and when the defendants did not oblige the plaintiff brought these proceedings. The plaintiff stated that the defendants do not reside on the suit property and that they have not cultivated the land since the court issued the injunction restraining them.
8. I have considered and reviewed the evidence adduced by the plaintiff and the documents tendered in support of the plaintiff's case. The evidence by the plaintiff has not been controverted as the defendants neither appeared and/or filed any defence. On the evidence I am satisfied that the plaintiff is the registered owner of land parcel number **Suna East/Wasweta I/15695** as evidenced by the copy of the title tendered in evidence dated 11<sup>th</sup> June 2012 showing the plaintiff to be the registered owner. As such registered owner the plaintiff is by virtue of Section 24 of the **Land Registration Act, 2012** vested with absolute ownership of the suit land together with all rights and privileges belonging or appurtenant thereto and his rights are indefeasible and his title to the land cannot be challenged save as provided under Section 26 (1) (a) and (b) of the Land Registration Act, 2012 on the ground of fraud or misrepresentation and/or it is proved the title was illegally or unprocedurally acquired. The plaintiff has tendered evidence that the defendants in 2011/2012 unlawfully trespassed onto the suit land and put up unauthorized temporary structures. This evidence has not been refuted.
9. On the whole I find and hold that the plaintiff has proved his case on a balance of probabilities and I accordingly enter judgment in his favour in the following terms:
  - a. **That the defendants do unconditionally vacate the plaintiff's land parcel Suna East/Wasweta I/15695 forthwith failing which an order of eviction to issue.**
  - b. **A permanent injunction be and is hereby issued restraining the defendants their agents, servants and/or representatives from in any way, however interfering with the plaintiffs occupation and/or ownership of land parcel Suna East/Wasweta I/15695.**
  - c. **The costs of the suit are awarded to the plaintiff.**

**Judgment dated, signed and delivered at Kisii this 23<sup>rd</sup> day of June, 2016.**

**J. M MUTUNGI**

**JUDGE**

**In the presence of:**

..... for the plaintiff

..... for the 1<sup>st</sup> and 2<sup>nd</sup> defendants

..... for the Court Assistant

**J. M MUTUNGI**

**JUDGE**