



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 410 OF 2013**

**WILSON TANUI BARNO.....1<sup>ST</sup> PLAINTIFF**

**STANLEY KINGA MWENDIA.....2<sup>ND</sup> PLAINTIFF**

**ENOCK KIPRUTO SALBEI.....3<sup>RD</sup> DEFENDANT**

**VERSUS**

**JENNIFER KOSITANY.....DEFENDANT**

**JUDGMENT**

***(Plaintiffs being owners of suit land; defendant interfering with the same; plaintiffs having purchased the suit land and having title; defendant not demonstrating any right over the suit land; plaintiffs' case succeeds; defendant permanently enjoined from the suit land).***

1. This case was commenced by way of a plaint that was filed on 19 July 2012. The plaintiffs pleaded that they are the joint registered owners of the land parcel L.R No. 13287/45 (I.R No. 50175) measuring 10.47 hectares (hereinafter the suit property or suit land). They pleaded that they were issued with title to that land on 8 March 1995. It was averred that despite their title, the defendant from the year 2006 started interfering with the suit land. It was pleaded that the defendant owns adjacent property and has been sending Administration Police officers to harass and chase away the plaintiffs. In the suit, the plaintiffs have asked for a declaration that they are the owners of the suit land; a permanent injunction against the defendant; an order of eviction and vacant possession; and costs of the suit.

2. No defence was filed within the prescribed time which led to an application dated 4 May 2014 being filed by the defendant vide which she inter alia sought to be allowed to file Defence out of time. On 22 January 2015, I allowed the application in so far as the order to file Defence out of time was concerned and directed that a Defence be filed within 7 days of the said date. A defence and counterclaim was filed on 10 March 2015 which was clearly outside the 7 days that I had given. This prompted the plaintiffs to file an application dated 4 June 2015, seeking to have the Defence and Counterclaim struck out for having been filed out of time. When the application came before me on 2 November 2015, counsel for the plaintiffs indicated willingness to withdraw the application subject to being paid throw away costs of Kshs. 15,000/= . I thought this was reasonable, and I therefore made an an order that the defence and counterclaim be allowed but subject to payment of throw away costs of Kshs. 15,000/= within 60 days. In default, the defence would be struck out. I thereafter listed the case for mention on 21 January 2016 for pre-trial conference.

3. On 21 January 2016, only counsel for the plaintiffs appeared. He submitted that throw away costs had not been paid and he asked that the defence be struck out. I had little choice but to strike out the defence and counterclaim because they were only admitted subject to payment of throw away costs. I then listed the matter for hearing on 4 May 2016. On this day, neither the defendant nor her counsel appeared, despite being duly served with a hearing notice. I directed that the matter do proceed for hearing.

4. The plaintiffs testified that the three of them purchased the land as partners. They purchased the land from the previous owner one Laban Kiptui in the year 1994 and were issued with a Certificate of Title. They produced the sale agreement and certificate of title as exhibits. They moved into the land and cultivated it for about 8 to 9 years. It is then that the defendant, who is their neighbor, started interfering with the land and in the year 2012, she brought some people to plough the land.

5. I have carefully considered the evidence. I have seen the sale agreement dated 18 November 1994 vide which the plaintiffs purchased the suit land. I have also seen the Certificate of Title which shows that the suit land is owned by the plaintiffs. The defendant has not tabled anything to demonstrate that she has any rights over the suit land. She therefore has no right to interfere in the said land. I see no reason why the plaintiffs' case should not succeed. It does succeed and I now issue the following orders :-

(a) As between the plaintiffs and defendant, the plaintiffs are hereby declared to be the rightful owners of the land L.R No. 13287/45 (I.R No. 50175) and it is further hereby declared that the defendant has no right over the same.

(b) he defendant, and/or her servants/agents/assigns or other person acting under her command/direction or authority, is hereby permanently restrained from entering, being upon, cultivating, or in any other way interfering with the plaintiffs' possession, use and occupation, of the land parcel L.R No. 13287/45 (I.R No. 50175).

(c) The plaintiffs will have the costs of this suit.

6. It is so ordered.

**Dated, signed and delivered in open court Nakuru this 14<sup>th</sup> day of July, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :-**

Mr. Opar holding brief for Mr. Olonyi for plaintiffs.

No appearance on part of M/s Chelule & Co. for defendant .

Court Assistant : Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**