



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

**AT NAIROBI**

**ELC NO. 761 OF 2012**

**JONSON KYAI NDOO.....PLAINTIFF**

**VERSUS**

**1. BERNARD WAMBUA KILONZO**

**2. HARRISON MUEMA KYOVE**

**3. BONIFACE KIUNDI.....DEFENDANTS**

**JUDGMENT**

The plaintiff is the registered owner of all that parcel of land known as **LR No. Emali Township Block 1/220** (hereinafter referred to as “**the suit property**”). The plaintiff brought this suit against the defendants seeking the following reliefs:-

- a. A declaration that the plaintiff is the lawful and bonafide allottee and owner of the suit property.
- b. An order for the eviction of the defendants from the suit property.
- c. A Permanent injunction restraining the defendants by themselves and/or their servants from entering upon, putting up structures thereon and/or in any other manner, interfering with the suit property.
- d. Costs of the suit.

In his amended plaint dated 29<sup>th</sup> January 2014, the Plaintiff averred that he is the registered proprietor of the suit property. The plaintiff averred that the suit property was allocated to him by the Commissioner of Lands on 26<sup>th</sup> April 1994 and he was registered as the owner thereof after paying all the requisite fees and charges in accordance with the terms of the letter of allotment. The plaintiff averred further that sometimes in the year 2009, the defendants invaded the suit property and started putting up structures thereon without his consent. The plaintiff averred that the defendants have declined and/or refused to vacate the suit property even after a demand was made upon them to do so.

The defendants did not enter appearance and interlocutory judgment was entered against them on 12<sup>th</sup> March 2014. When the suit came up for formal proof on 7<sup>th</sup> March 2016, the defendants did not appear even after being served with a hearing notice. The plaintiff gave evidence and did not call any witness. The plaintiff (PW1) testified that; he was allocated the suit property by the Commissioner of Lands

through a letter of allotment dated 26<sup>th</sup> April 1994. He accepted the allotment and paid all the requisite charges. He was later issued with a lease and certificate of lease by the Government of Kenya on 26<sup>th</sup> November 2013. He took possession of the suit property as soon as it was allocated to him. He however did not develop the same because he did not have finances to do so. The defendants encroached on the suit property when he wanted to develop the same and put up unplanned structures thereon. The 1<sup>st</sup> defendant has put up a shed for a posho mill on the suit property. The 2<sup>nd</sup> defendant has put up a shop while the 3<sup>rd</sup> defendant has fenced off a portion of the suit property using a perimeter wall which he intends to use as a garage. The plaintiff stated further that when he was allocated the suit property, the same was vacant. He produced in evidence as exhibits, copies of, the letter of allotment dated 26<sup>th</sup> April 1994, receipts for various payments that were made to the Commissioner of Lands and the County Council of Makueni and a certificate of lease in respect of the suit property dated 26<sup>th</sup> November 2013.

After the close of his case, the plaintiff who appeared in person informed the court that he did not wish to make any closing submissions. He informed the court that he wished to rely entirely on the evidence on record and on the contents a document that he had filed earlier in court headed "FORMAL PROOF SUBMISSION E.L.C.761 OF 2012". I have considered amended plaintiff and the evidence on record. The plaintiff's claim against the defendants is based on the tort of trespass. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause.

What I need to determine therefore is whether the plaintiff has proved that he is the owner of the suit property and that the defendants have entered and occupied the same without any justifiable cause. The plaintiff has demonstrated that he is the registered owner of the suit property by producing in evidence a copy of a certificate of lease for the suit property in his name (P.exh.10). Under section 24 (b) of the Land Registration Act, 2012, the registration of the plaintiff as the proprietor of the leasehold interest in the suit property vests upon him absolute ownership thereof together with all rights and privileges associated with such ownership. Under section 25 of the said Act, the plaintiff's rights over the suit property are indefeasible except as provided under the said Act. Section 25 (1) of the Land Registration Act, 2012 provides as follows:-

**1. The rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by an order of court shall not be liable to be defeated except as provided in this Act and shall be held by the proprietor together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever but subject:**

**a. To the leases, charges and other encumbrances and to the conditions and restrictions if any shown in the register; and**

**b. To such liabilities rights and interests as affect the same and are declared by section 28 not to require noting on the register unless the contrary is expressed in the register.**

This suit was not defended by the defendants. The plaintiff's evidence was therefore not controverted by the defendants. The plaintiff's title to the suit property was not contested. The plaintiff's testimony that the defendants entered onto and occupied the suit property without his consent or authority was also not challenged. The plaintiff having proved his ownership of the suit property and the defendants' entry and occupation thereof, the onus was upon the defendants to justify their occupation of the property.

In the absence of any evidence from the defendants, the only conclusion this court can make is that the defendants have no justifiable cause for entering and occupying the suit property and as such they are trespassers thereon. For the foregoing reasons, I am satisfied that the plaintiff has proved his claim against the defendants and that he is entitled to the prayers sought in the amended plaintiff.

I therefore enter judgment for the plaintiff against the defendants jointly and severally for;

1. A declaration that the plaintiff is the lawful owner of all that parcel of land known as LR. No.

Emali Township Block 1/220 formerly known as Un-surveyed Industrial Plot-Emali Township.

2. A permanent injunction restraining the defendants, their agents and/or servants from entering, putting up structures on or interfering in any other way with all that parcel of land known as LR. No. Emali Township Block 1/220 formerly known as Un-surveyed Industrial Plot-Emali Township.

3. An order that the defendants do vacate and handover possession of LR. No. Emali Township Block 1/220 formerly known as Un-surveyed Industrial Plot-Emali Township to the plaintiff within ninety (90) days from the date of service of a copy of the decree extracted from this judgment upon their failure to which warrants shall be issued for their forceful eviction.

4. The plaintiff shall file in court an affidavit of service of the said decree upon the defendants and the filing of the said affidavit of service shall be a condition precedent to any further proceedings herein at the instance of the plaintiff.

5. The plaintiff shall have the costs of the suit.

**Delivered and Dated at Nairobi this 4<sup>th</sup> day of November, 2016.**

**S.OKONG'O**

**JUDGE**

**In the presence of**

**The Plaintiff in person for the Plaintiff**

**N/A for the Defendants**

**Kajuju Court Assistant**