



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

**AT KISUMU**

**ELC CASE NO.15 OF 2015**

**JOSEPH ODERO.....PLAINTIFF**

**VERSUS**

**MORRIS AGILI OWUONDO..... DEFENDANT**

**JUDGMENT**

1. **Joseph Odero**, the Plaintiff, filed this suit against **Morris Agili Owuondo**, the Defendant, through the plaint dated 26<sup>th</sup> June 2012, seeking for an order of vacant possession, permanent and mandatory injunctions over land parcel **Kisumu/Korando/297**, general damages and costs. The Plaintiff avers that he is the registered proprietor of the said land since 12<sup>th</sup> November 1990 and that the Defendant had on or about March 2011 trespassed onto it and constructed a semi-permanent house thereon without his consent. That despite Defendant being served with demand to vacate he had declined and hence this suit.

2. The claim is denied by the Defendant through the amended defence dated 1<sup>st</sup> July 2013 and prays for the suit to be dismissed with costs. The Defendant avers that the land belongs to his deceased's brother namely **Esborn Owuondo Owuondo** who had before his death bequeathed it to his nephew Maurice Owuondo. That the Defendant's name is Moris Owuondo Olang and not Morris Agili Owuondo. That the person named Esborn Olang Owuondo, from whom the Plaintiff claims to have bought the land from, does not exist. That the land is still registered in the name of **Esborn Owuondo Owuondo**. That the Plaintiff obtained the land through fraud and irregularly.

3. The parties counsel appeared before the Deputy Registrar on the 2<sup>nd</sup> December 2015 and fixed the suit for hearing on the 7<sup>th</sup> June 2016. That come the hearing date, the Defendant and his counsel did not attend and the court allowed the Plaintiff to present his case. The Plaintiff testified as PW1. The Plaintiff testified how he acquired the land through purchase from 1989 and got registered as proprietor on 12<sup>th</sup> November 1990. He produced copies of the title deed, register and certificate of official search for land parcel **Kisumu/Korando/297** confirming that he was the registered proprietor. He also produced copies of the demand notice made to the Defendant to vacate.

4. The following are the issues for the court's determination;

a. Who the registered proprietor of land parcel **Kisumu/Korando/297** is.

b. If the Plaintiff is the registered proprietor of the suit land, whether he got so registered irregularly and or fraudulently.

c. Whether the Defendant is a trespasser on the said land.

d. Whether the orders sought should issue.

e. Who pays the costs.

5. The court has considered the pleadings by both parties, oral and documentary evidence by the Plaintiff and submissions by his counsel and come to the following findings;

a. That this court is obligated under the provisions of **Section 26** of the Land Registration Act No.3 of 2012 to take the person named in the documents of title issued by the Land Registrar to be the absolute and indefeasible owner of the land so described therein. That the Plaintiff herein has availed copies of the title deed issued on 12<sup>th</sup> November 1990, copy of the register certified as a true copy on 10<sup>th</sup> April 2012 and certificate of official search issued on 26<sup>th</sup> January 2011 all for land parcel **Kisumu/Korando/297** confirming that he is the registered proprietor of that land.

b. That the Defendant averment in the defence that the said land is still in the name of his deceased brother namely, Esborn Owuondo Owuondo is not supported by any documentary evidence sourced from the Land Registrar's office and therefore fails to rebut the evidence adduced by the Plaintiff and the finding in (a) above.

c. That though the Defendant set out the particulars of fraud and irregularity attributed to the Plaintiff in the way he obtained registration with the suit land at paragraph 11 A of the amended statement of defence, the Defendant did not offer any evidence to support his allegations. That the Defendant's unsubstantiated allegations are not sufficient to rebut the Plaintiff's evidence that he is the registered proprietor of the land, and therefore the absolute indefeasible owner of the said land.

d. That though the Plaintiff prayed for general damages for trespass under prayer (4), he did not offer evidence of the loss suffered so as to guide the court on quantum and the court will not grant that prayer.

e. That flowing from the foregoing the court find that the Plaintiff has proved his case against the Defendant on a balance of probabilities that he is the registered proprietor of the said land and that the Defendant has been a trespasser on it since March 2011.

6. That the court therefore enters judgment for the Plaintiff against the Defendant and issues the following orders:

a) That the Defendant do vacate from land parcel **Kisumu/Korando/297** and give vacant possession of the said land to the Plaintiff within ninety (90) days.

b) That should the Defendant fail to comply with order (a) above, eviction orders to issue.

c) That the defendant do pays the Plaintiff costs of this suit.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 2<sup>ND</sup> DAY OF NOVEMBER 2016**

In presence of;

Plaintiff                      ABSENT

Defendant                    ABSENT

Counsel                      ABSENT

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**2/11/2016**

2/11/2016

Before S.M. Kibunja Judge

Oyugi court assistant

Parties absent

Court: judgment dated and delivered in open court in absence of all the parties.

Deputy Registrar to communicate to all the parties.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**2/11/2016**