



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. SUIT NO. 1105 OF 2014

JANE KAGURE THIGE.....PLAINTIFF

VERSUS

JOSEPH MWAURA CHEGE.....DEFENDANT

JUDGEMENT

1. The Plaintiff sued the Defendant seeking a permanent injunction to restrain the Defendant or his agents from trespassing, selling, alienating, disposing or interfering with the Plaintiff's quiet possession of L.R. No. Nairobi/Block 118/368 ("the Suit Property") and an order of eviction against the Defendant or his agents from the Suit Property. The Plaintiff also seeks mesne profits as well as the costs of this suit.

2. The Plaintiff was registered as the owner of the Suit Property on 14/8/2012. She bought it from Drumvale Farmers' Cooperative Society Limited. In 2010, the Plaintiff discovered that the Defendant had trespassed onto her land and constructed a permanent structure. Her attempts to get the Defendant to vacate the Suit Property proved futile.

3. The Defendant was served and he appointed the firm of Okindo Oguttu and Company Advocates to represent him. These advocates filed a memorandum of appearance on 16/12/2014 but did not file a defence. The court entered interlocutory judgement for the Plaintiff against the Defendant on 10/6/2015.

4. The case was heard on 10/4/2018. The Plaintiff testified. She adopted her witness statement filed in court on 14/8/2014. She stated that when the Defendant trespassed on her land in 2010, she reported the matter to the area Chief who summoned the Defendant to a meeting which he failed to attend. It was also her evidence that attempts to settle the matter had been made but the Defendant failed to pay the agreed sum of Kshs. 500,000/= as damages to her. She also stated that the Defendant had undertaken to finance the swapping of the Suit Property with L.R. No. Nairobi/Block 118/380 but he later declined to do this.

5. The Plaintiff produced a copy of the title over the Suit Property, a certificate of official search dated 31/10/2013 confirming that she is the registered owner of the Suit Property. She also produced copies of the rates payment requests showing her name against the Suit Property. She produced a copy of the subdivision scheme approval dated 11/11/1993 over the Suit Property issued to her and a similar subdivision scheme approval of the same date issued to the Defendant in respect of Nairobi/Block 118/380. The letter dated 17/1/2010 on the notepaper of Drumvale Farmers' Cooperative Society Limited (in liquidation) confirmed that their register showed that the Suit Property belonged to the Plaintiff.

6. The Plaintiff also produced a letter dated 19/9/2013 from the Defendant's advocate to her advocates. In the letter the advocate states that the parties had agreed to swap plots since the Defendant had commenced construction on the Suit Property and had put up a 4 bedroomed maisonette. The demand letter urged the Plaintiff to stick to the earlier arrangement while intimating that any suit filed would be defended. The Plaintiff produced a copy of the amended registry index map (RIM) for Nairobi/Block 118 (Kamulu) which shows that plot number 368 is near plot number 380. The two plots run parallel to each other and are separated by a road which serves the adjoining plots.

7. The court has considered the evidence adduced and finds that the Plaintiff has proved on a balance of probability that she is the owner of the Suit Property.

8. The court allows prayers (a) and (b) of the Plaintiff's claim. The Defendant will be evicted from the Suit Property within Forty Five (45) days of this judgement.

Dated and delivered at Nairobi this 21st day of May 2018.

K. BOR

JUDGE

In the presence of: -

Ms. Athman holding brief for Mr. Mwangi for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendant



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