



Case Number:	Environment and Land Case 715 of 2012
Date Delivered:	21 Apr 2022
Case Class:	Civil
Court:	Environment and Land Court at Nairobi
Case Action:	Judgment
Judge:	Edward Karoph Wabwoto
Citation:	Margaret Wangui Gatero v Felix Mureithi; Paul Mutua Makenzi & 2 others (Third parties) [2022] eKLR
Advocates:	Mr. Ojiambo for the Plaintiff Mr. Kabaiku for 1st and 2nd Third Party
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Plaint ordered
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 715 OF 2012

MARGARET WANGUI GATERO PLAINTIFF

(Suing as the legal representative of the Estate of Duncan Wanjau Gatero)

VERSUS

FELIX MUREITHI DEFENDANT

PAUL MUTUA MAKENZI 1ST THIRD PARTY

MARGARET MAKENZI 2ND THIRD PARTY

HAILE IKUBU 3RD THIRD PARTY

JUDGEMENT

Introduction and litigation history

1. The suit was initially commenced vide a Plaint dated 9th October 2012 by **Grace Wambui Gatero** suing as Administrator of the Estate of **Duncan Wanjau Gatero (her husband)**. Mr. Gatero was said to be the registered owner of **Plot Number 536 (LR No. 14870/404)** situated in **Kiambu measuring 0.1000Ha or thereabout**. After her demise she was substituted by **Margaret Wangui Gatero** as legal representative of her late father's estate. In the Plaint, the Plaintiff sought for the following reliefs against the Defendant:

- i) An order for eviction compelling the Defendant or his servants or agents to move out of the portion of Plot No 536 (LR No. 14870/404) that he occupies by himself or his servants or agents;*
- ii) A permanent injunction restraining the Defendant by himself or servants or agents, family members from entering, occupying, remaining in occupation, using or in any other manner, howsoever interfering with the Plaintiffs, use, enjoyment, occupation and ownership of the parcel of land known as Plot No 536 (LR No 14870/404) or any part thereof;*
- iii. General damages for trespass;*
- iv. Mesne profits;*
- v. Costs of the suit;*
- vi. Interest in (c), (d) and (e) above at court rates; and*
- vii. Any other or further relief as the Court deems fit to grant.*

2. Later, the Plaintiff was granted leave wherein she filed a further Amended Plaint dated **15th June 2021**, the names of Grace Wambui Gatero was substituted with the names of Margaret Wangui Gatero.

3. The Defendant filed a Defence dated 26th November 2012. The defence demurred to the orders that were sought by the Plaintiff and averred *inter alia* that he was an innocent purchaser for value without notice and if there was any mistake that led him to undertaking construction on the suit property, then the same was committed by the vendors. He also gave notice for his intention to have a third party notice issued to the said vendors who were Paul Mutua Makenzi and Margaret Makenzi who had sold and pointed out to him the suit property.

4. Consequently, third party proceedings were taken out, the 1st and 2nd third parties entered appearance and filed their defence on **2nd April 2013**.

5. Prior to the hearing of the suit parties had made several attempts to amicably settle the matter however the purported settlement proved inoperable thus resulting in the matter to proceed for trial.

6. On **7th October 2021**, the Court gave the following directions with regard to hearing and disposal of the suit:

i. The suit was initiated by the Plaintiff on 10th October 2021 and vide a further amended plaint dated 15th June 2021 consequently the plaintiff's claim shall be heard first.

ii. The question for determination of liability between the defendant and third parties herein shall be tried and determined at the same time as the trial of this action unless otherwise directed by the court;

iii. Parties are granted leave to file, serve and exchange any additional documents that they intend to rely upon during the trial within 7 days from the date thereof

iv. The 1st and 2nd third parties are granted leave and directed to serve the 3rd third party herein of the hearing date of this suit by substituted means of service through advertisement vide a local daily newspaper with national circulation.

v. The hearing shall be in open court at a date to be set after delivery of this directions.

7. Parties complied with the aforementioned directions save for the 3rd third party. The matter was set down for hearing on **10th November 2021** and later parties were granted time to file their written submissions which the court had an opportunity to peruse and consider.

Plaintiffs' case

8. The Plaintiff, **Margaret Wangui Gatero (PW1)** testified to being the daughter of the deceased and legal representative of Duncan Wanjau Gatero. During her evidence she adopted her witness statement dated **17th June 2021** and bundle of documents dated **17th October 2012** as part of her evidence in chief. Her documents were produced as **PEX 1-20**.

9. She testified that the property in dispute is **LR No. 14870/404** was registered in her late father's name. After being away from the year 2001-2010 for studies she came back in 2011 and found the defendant had built a house on the suit property. She made efforts in reaching out to the Defendant who responded through his advocate which a request for undertaking a survey to try in resolving the dispute. The survey was later undertaken and its report confirmed that indeed the defendant had built on the wrong land.

10. In cross-examination, she stated that she first saw the construction by the Defendant in mid 2011. She conceded that there was an apparent mistake by the Defendant who had constructed on their land and that a survey map would have clarified the issue.

11. Upon further cross examination by counsel for the 1st and 2nd third party, PW1 reiterated that she was not sure whether the grant of letters of administration were confirmed. Further, she confirmed that there were negotiations to have LR 14870/411 offered as an alternative land since it had no clear owner but according to her, it was her wish to get back her father's land.

Defendant's case

12. The Defendant, **Felix Mureithi (DW1)** testified to staying at Membley Estate Ruiru. He adopted witness statement and the bundle of documents as his evidence in chief. The same was produced as **DEx 1-13**. In addition, the supplementary list dated **21st October 2021** was also adopted as marked **DEx 14**.

13. He confirmed buying Plot 287 from the 1st and 2nd Third Party to which he still holds its original title. He narrated that he began looking for a plot in 2004. After extensive search, he later met and had discussions with the 1st and 2nd Third Party, he confirmed from them that the suit property had the necessary title and all rates had been paid. It was his further testimony that in a bid to finalize the transaction, he contacted and engaged an advocate who drafted the sale agreement and payment of purchase price was affected.

14. He also stated that he moved into the house in December 2010 after the construction was completed and it was only until sometimes in the year 2011 that the Plaintiff called him out alleging that he had built on their plot. He averred that the current market value for the house was Ksh **14million** and the land was valued at Ksh **11 million** totalling to approximately **25million**.

15. In cross-examination, he confirmed that the transfer process had been started but not finalized. They were to finalize immediately after payment. Unfortunately, the process was affected by the unavailability of the 3rd Party who had never traced and the title has never transferred to their name.

16. On further cross examination, he also conceded that he had indeed built on the Plaintiff's land by mistake. A mistake which cannot be attributed to the Plaintiff nor to him but to the 1st and 2nd third parties.

1st and 2nd Third Parties' Case

17. The 1st and 2nd third party filed their statement of defence dated 28th March 2013. They admitted to selling property known as L.R No. 14870/287 to the Defendant which was pointed out to him by M/S Daykio Plantations.

18. They also denied being the authors of the mistake that led to the Defendant constructing on the Plaintiff's land. In buttressing this contention, they averred that it was Dykio Plantations who pointed out the beacons to the Defendant. According to them, the entire process was undertaken in good faith. They urged the court to dismiss the Plaintiff's suit and/or any perceived cause of action against the third parties with costs.

19. During the hearing on 10th November 2021, the 1st third party Paul Mutua Makenzi testified on his behalf and on behalf of the 2nd third party. He stated that he was the husband to the 2nd third party and that they had also filed a third party notice against the 3rd third party Haile Ikubu who despite being served had not entered appearance nor filed any response. The 3rd third party had also not participated in the proceedings herein.

20. On cross examination by counsel for the Plaintiff, he knew the Defendant had constructed in the Plaintiff's plot in the year 2012 and he never considered it a serious issue at that time. He further stated that he was willing to give the Plaintiff an alternative plot which had remained vacant.

21. While being cross examined by counsel for the Defendant, he reiterated that he was willing to compensate the Plaintiff with the vacant land since the Defendant does not have any other land to relocate to. In re-examination by his own counsel, he reiterated that the Plaintiff had agreed to take Plot No. 411 which was still available to date.

3rd Third Party's Case

22. The 3rd Third Party was served by way of substituted service but did not participate in the proceedings.

The Plaintiff's submissions

23. The Plaintiff filed their written submissions dated 9th December 2021 and further submissions dated 11th March 2022 through the firm of **Acorn Law Advocates LLP**. Counsel for the plaintiff identified the following three issues for determination; *who is the rightful owner of Plot No. 536 L.R No. 14870/404, has the Defendant trespassed to Plot No. 536 L.R No. 14870/404 and whether the*

Plaintiff is entitled to reliefs sought in the plaint.

24. On the issue of who was the rightful owner of the suit property, counsel submitted that the Plaintiff had successfully proved that the suit property was registered in the names of Duncan Wanjau Gatero and they had produced a certificate title to the same. Counsel also referred to the valuation report which dated 21st October 2021 that was produced by the Defendant and that it indeed confirmed that the suit property was registered in the names of the Plaintiff. Further, counsel relied on **Section 24 and 26(1) of the Land Registration Act** and the case of *Margaret Njeri Wachira v Eliud Waweru Njenga [2018] eKLR* to support the claim of being an indefeasible owner whose rights and privileges ought to be protected.

25. On whether or not the Defendant had trespassed to the suit property, it was submitted that the Defendant has already admitted so in his witness statement. Relying on the case of *Joseph Kipchirchir Koech v Philip Chereuiyot Sang [2018]* and *Rhoda S Kiilu v Jiangxi Water and Hydropower Construction Kenya Limited [2019]*, the court was urged to find the Defendant not only trespassed but also continues to do so and on that basis the court was also urged to award general damages.

26. On the reliefs sought, Counsel submitted that the Plaintiff had generally proved her case to the required standard and was entitled to the reliefs sought in the Plaint. In the further written submissions dated **11th March 2022**, the Plaintiff sought to address the issue of representation as raised during hearing. It was submitted that Margaret Wangui Gatero the legal representative had been substituted vide an order of the Court. In conclusion, the Plaintiff submitted that the Defendant had deprived the Plaintiff of a 15 year benefit from the suit property. For this, the Plaintiff sought for a quantified award of **Kshs 5,000,000/-** as reasonable compensation in addition to all other prayers.

The Defendant's submissions

27. The Defendant filed his written submissions dated 4th March 2022 through the firm **M/S Kariba Mbabu & Co. Advocates**. In the said submissions, counsel identified six issues for determination by the court. These were; *Whether Margaret Wangui Gatero as the holder of the letters of administration for the Estate of Grace Wambui Gatero has a legal capacity to prosecute this suit for the Estate of Duncan Wanjau Gatero or whether the Plaintiff suit against the Defendant abated; Whether the Defendant entered and developed parcel no. L.R 14870/404 through a genuine mistake, whether the location of parcel no. L.R 14870/404 has been identified to be on the portion where the Defendant has constructed his house, whether the Plaintiff is entitled to the orders sought against the Defendant, whether the Defendant would be entitled to indemnity against the first and second third parties in any event and who should bear the costs.*

28. It was contended that there was no evidence confirming that PW1 had capacity to sue on behalf of the estate of Duncan Wanjau Gatero who was the registered proprietor of the suit property. It was added that the administrator of the estate of Duncan Wanjau Gatero was not substituted and there was nothing to show that PW1 was the administrator.

29. On whether the Defendant entered and developed parcel no. L.R 14870/404 through a genuine mistake, it was submitted that the indeed the Defendant's actions was caused by a mistake and that such a mistake should be dealt with in an equitable manner. In support of this, Counsel relied on the cases of *Belinda Murai & 9 others vs Amos Wainana (1979)* and *Philip Keipto Chemwolo & Another vs Augustine Kubende [1986]*.

30. On whether the location of parcel no. L.R 14870/404 had been identified to be on the portion where the Defendant has constructed his house, Counsel submitted that PW1 did not submit any survey map, surveyor's report or any expert report to confirm that indeed the Defendant had constructed on his plot and as such without that report, the Plaintiff's evidence was inconclusive.

31. On whether or not the Plaintiff was entitled to the reliefs sought, counsel submitted that the entry, construction and occupation by the Defendant was innocent having been an innocent purchaser for value and thus the Plaintiff should not be granted any of the prayers sought.

32. On whether or not the Defendant was entitled to be indemnified by the 1st and 2nd third parties, it was stated that the 1st and 2nd third parties are the authors of the mistake and were responsible for pointing out to the Defendant the wrong property before he could proceed with the construction and occupation of the same and as such they should indemnify the Defendant.

33. On the issue of costs, it was submitted that the same should be borne by the 1st and 2nd 3rd Parties who should also bear the costs of the third party proceedings.

Submissions by the 1st and 2nd third parties.

34. In their submissions dated 2nd February 2022, filed by M/S Kabaiku & Co. Advocates, it was submitted that the 3rd third party entered into a sale agreement on 31st December 1997 with the 1st and 2nd third parties for a transaction relating to LR No 14870/411. The Transfer was signed and completion documents released to the 1st and 2nd Third Parties. Unknown to them, their documents were misplaced by their Advocate. Mr Godfrey Pwoka Wanyonyi. They reiterated their difficulty in locating the 3rd third party whom they believe may have relocated to Ethiopia. Counsel relied on **Section 33 of the Land Registration Act** and an affidavit sworn by Advocate Godfrey Pwoka Wanyonyi dated 4th April 2016.

35. In light of the foregoing, counsel submitted that the best option for resolving the dispute would be for the provisional title of LR No 14870/411 be issued by the Registrar of Titles and that the Deputy Registrar, Environment and Land Court effect the transfer of LR No 14870/411 to themselves in order to transfer the land to the Plaintiff.

Issues, Analysis and determination

36. I have considered the parties' pleadings, evidence and submissions. I have also considered the relevant legal framework and jurisprudence. Taking into account the parties' pleadings, evidence and submissions, in my view, the following are the key issues falling for determination in this suit:-

- i) *Whether Margaret Wangui Gatero has legal capacity to prosecute this suit on behalf of the Estate of Duncan Wanjau Gatero"*
- ii) *Who is the rightful owner of the suit property being Plot No 536 LR No. 14870/404"*
- iii) *Whether the Defendant trespassed to Plot No. 536 L.R No. 14870/404"*
- iv) *Whether the Plaintiff is entitled to the reliefs sought"*
- v) *Whether the Defendant is entitled to be indemnified by the 1st and 2nd third parties"*
- vi) *What orders should issue as to costs"*

Issue No. 1

Whether Margaret Wangui Gatero has legal capacity to prosecute this suit on behalf of the Estate of Duncan Wanjau Gatero"

37. Section 2 of the Civil Procedure Act defines **legal representative** as follows:-

"means a person who in law represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on who the estate devolves on the death of the party so suing or sued".

38. In the instant case, Plaintiff submitted that Margaret Wangui Gatero was not only the administrator but also the legal representative of the Estate of Duncan Wanjau Gatero. This was based on the limited grant of letters of administration *ad litem* issued to her in succession cause no. 910 of 2011 in the matter of the Estate of Duncan Wanjau Gatero which was produced in the Plaintiff's further list of documents.

39. The court having made reference to the said grant of letters of administration *ad litem*, if the finding of this court that the said objection is moot since it is not in doubt that Margaret Wangui Gatero is the legal representative of the Estate of Duncan Wanjau Gatero and the standing of this suit cannot be defeated by the said objection nor on the objection that the suit had abated after the

death of Grace Wambui Gatero.

Issue No. 2

Who is the rightful owner of the suit property being Plot No 536 LR No. 14870/404"

40. PW1 stated that the suit property was registered in the names of her late father Duncan Wanjau Gatero was. She also produced a copy of the certificate of title issued on 24th May 1993 which confirmed the same position. Additionally, the same was not disputed by the Defendant and the 1st and 2nd third parties.

41. The law is very clear on the position of a holder of a title in respect to the land. **Section 24(a) of the Land Registration Act** provides for the interest conferred by registration. It provides;

“Subject to this act the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all the rights and privileges belonging or apparent thereto.”

Section 26(1) of the Land Registration Act provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer shall be taken by all the courts as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except;

a) On the ground of fraud or misrepresentation to which the person is proved to be a party or;

b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

42. The Plaintiff has proved that they are indeed the registered owner of the suit property and therefore the rightful owners. Hence it is the finding of this court that without a doubt the Plaintiff is indeed the registered and lawfully owner of the suit property.

Issue No. 3

Whether the Defendant trespassed to Plot No. 536 L.R No. 14870/404"

43. PW1 stated that the Defendant had refused to vacate and had trespassed onto the suit land to the extent of putting up some structure.

44. During the hearing and in his submissions, the Defendant denied trespassing to the suit property. The Defendant testified that after purchasing his property from the 1st and 2nd Third party, he was shown the physical location by the 1st and 2nd the third party.

45. It is therefore not in dispute that the Plaintiffs are the legal owners of Plot No. 536 (L.R No. 14870/404). From the foregoing, it is evident that the confusion was caused by the 1st and 2nd third parties who sold the property to the Defendant. In the circumstances and in as much as the Defendant had occupied the Plaintiff's property on the supposition that it was his, it is apparent that the mistake was attributed to the 1st and 2nd third parties which mistake should not be placed on him, see also *Colwill v Reeves (1811) 2 Camp 575.*

46. In the instant case, the evidence that was adduced during trial point to the fact that the Defendant acted with a mistaken belief that the Physical location of the suit property was the actually location of his property. Accordingly, the Defendant's action of occupying the Plaintiffs' property was not involuntary. In the case of *Miriam Njoki Chege & another v Godfrey Gatundu, Thuo Investment Company Limited (Interested Party) [2022] eKLR* the court held that an involuntary entry and or mistaken occupation of a property does not necessary amount to trespass. It is therefore the finding of this court that the defendant's action of occupying the Plaintiff's property was indeed based on a mistaken belief that it was his and the same was not a deliberate case of trespass.

Issue No. 4

Whether the Plaintiff is entitled to the prayers sought''

47. The Plaintiff sought for various reliefs against the Defendant. Having held that the Plaintiff is the legal owner of suit land and that the defendant had indeed confirmed occupying and constructing on the same albeit on the mistaken belief that the property was his, the Plaintiff is entitled to some of the prayers sought for the purposes of protecting her legitimate interest to the suit property.

48. On the prayers for eviction and permanent injunction, from the evidence of PW1 stated above, it is the finding of this Court, that the Plaintiffs have met the threshold for the grant of the same. The plaintiff is the legitimate proprietor of the suit property, and she is entitled to enjoy the rights and privileges appurtenant to the title. Similarly, the Defendant has no right to continue being in occupation of the suit property. As such these prayers are meritorious and the same are for granting.

49. On the issue of general damages for trespass against the Defendant, Counsel for the Defendant submitted that the same should not be granted since the Plaintiff never raised the issue earlier with the Defendant and further that the occupation and or entry into the same was based on a genuine mistake which should not be visited on the Defendant. As stated earlier in this judgment, this court having found that the Defendant is not guilty of trespass, the said relief cannot be granted.

50. On the claim for mesne profits, **Section 2 of the Civil Procedure Act** defines “*mesne profits*”, in relation to property, to mean those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession. Wrongful possession by the defendant is the very essence of a claim for mesne profits. In *Ishan Chandra Budhan vs. Amuddin [1901]5 C.W.N 720 Hill J.* held that damages are claimable only for the period of the defendant’s wrongful possession actual or constructive.

51. The Court of Appeal in *Peter Mwangi Mbuthia vs. Samow Edin Osman & Naftali Ruth Kinyua Civil Application No.NAI No.38 of 2004* stated the law on mesne profit as follows,

“As regards the payment of mesne profit, we think the applicant has an arguable appeal. No specific sum was claimed in the plaint as mesne profit and it appears to us prima facie, that there was no evidence to support the actual figure awarded. That being so, it must be very hard on the applicant to be forced to pay an amount which had not even been pleaded in the first place, and on which the first respondent offered no evidence at all.”

52. It is therefore my opinion that the Plaintiff is not entitled to mesne profits as claimed as she did not state or prove the amount of the said mesne profits. Additionally, the Plaintiff’s claim on trespass having failed, the said claim cannot be granted.

Issue No. 5

Whether the Defendant is entitled to be indemnified by the 1st and 2nd third parties''

53. In the third party notice dated 22nd February 2013, the Defendant averred that the 1st and 2nd third party sold to him the property known as L.R No. 14870/287 and pointed out its beacons and ground before he commenced construction and it later emerged that was not the correct physical location of his property.

54. During the hearing, the 1st and 2nd third parties admitted to having sold the property to the Defendant. Counsel submitted that they were entitled to be indemnified by the 1st and 2nd third party who was the author of the mistake. It is not in doubt that the 1st and 2nd third parties are the author of the misfortune that has brought the Plaintiff and the Defendant into the corridors of Justice.

55. The third party proceedings in the present case were instituted by the defendant under **Order 1 rule 15 of Civil Procedure Rules (CPR)**. Upon being served the 1st and 2nd third parties also instituted further third party proceedings against the 3rd third party who never entered appearance nor participated in the suit. By order 1 rule 15, CPR a third party can dispute a plaintiffs’ claim in the suit as against the defendant or dispute his own liability to the defendant or dispute both. In the present case the third parties disputed both claims. After the third party enters appearance, the defendant giving third party notice is required to apply to the court for directions and if the court is satisfied that there is a proper question to be tried as to liability of the third parties may:

“Order the question of such liability as between the third party and the defendant giving notice, to be tried in such manner, at or after the trial of suit, as the court may direct; and if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party”.

56. As **rule 22 of order 1 CPR** provides the defendant is required to apply for directions, *“if a third party enters appearance pursuant to third party notice”*. The rule does not require that directions be applied for after the third party files a defence. It seems to me that it is at the hearing of the third party summons for directions that the third party can apply for leave to file a defence to the defendant’s claim. It is also at the hearing of third party summons for directions that the trial Judge should direct whether or not a trial between the defendant and third party should be held, and, if so, at what stage and the extent to which the third party can participate in the trial between the plaintiff and defendant regarding the defendant’s liability to the plaintiff.

57. In the instant case, directions were issued on 7th October 2021 that the trial between plaintiff and defendant should precede the trial between the defendant and third parties is the usual direction given in cases where a defendant claims indemnity from a third party.

58. Counsel for the 1st and 2nd 3rd Parties submitted that the 3rd third party had not entered appearance despite being served and hence judgment should be entered against them as regards the claim for the 1st and 2nd third party.

59. Having found that the Plaintiff is entitled to the reliefs sought against the Defendant save for the claim for general damages and mense profits it is the finding of this court that equally the the 1st and 2nd Third Parties are liable to indemnify the defendant. In respect to the 3 third party, it is the finding of this court that the provisions of **Order 1 rule 19** of the Civil Procedure rules would be invoked and be applicable to him.

Issue No. 6

What orders should issue as to costs”

60. Although costs of an action or proceedings are at the discretion of the Court, the general rule is that costs shall follow the event in accordance with the proviso to **Section 27 of the Civil Procedure Act (Cap. 21)**. A successful party should ordinarily be awarded costs of an action unless the Court for good reason directs otherwise. Looking at the circumstances of this case, I direct that the Defendant do bear the costs of the Plaintiff in relation to the suit.

61. Having also found that the Defendant is entitled to be indemnified by the 1st and 2nd third party, the 1st and 2nd third party will indemnify the Defendant against the said costs and they shall also bear the costs of the third party proceedings. The said orders as to costs shall also apply to the 3rd third party who despite being served chose not to participate in the proceedings.

Conclusion

62. In conclusion, I must say that while I sympathise with the Defendant’s case, it is unfortunate that he did not do due diligence before commencing construction on the suit property. I have no doubt that when the said issue was initially brought to his attention, he knew that one day the same would catch up with him when chicken would come home to roost. Courts are bound by the facts and evidence placed before it, unfortunate as it might be I must point out that the parties too had previously tried to amicable resolve the matter but the consent that was agreed was inoperable as was earlier stated.

Final orders

63. From the foregoing analysis, the Plaintiff has proved her case on a balance of probabilities and in this regard, this Court makes the following final orders;

i) An eviction order be and is hereby issued directed to the Defendant, his servants or agents ordering him to vacate the plaintiffs’ parcel of land known as Plot No. 536 (L.R No. 14870/404) within ninety (90) days from the date of this Judgment, failure of which the Plaintiff be at liberty to evict him from the suit property.

ii) *A permanent injunction be and is hereby issued restraining the Defendant, his servants, agents and or family members from occupying, using, dealing or in any other manner interfering with parcel of land known as Plot No. 536 (L.R No. 14870/404).*

iii) *The Plaintiff is awarded costs of the suit which shall be met by the Defendant;*

iv) *The 1st and 2nd and 3rd Third parties shall wholly indemnify the defendant in respect to any damages and costs incurred herein.*

v) *The 1st, 2nd and 3rd Third Parties shall pay the costs of the third party proceedings to the Defendant.*

Judgment accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF APRIL 2022

E. K. WABWOTO

JUDGE

IN THE PRESENCE OF: -

MR. OJIAMBO FOR THE PLAINTIFF

N/A FOR THE DEFENDANT

MR. KABAIKU FOR 1ST AND 2ND THIRD PARTY

N/A FOR 3RD THIRD PARTY

COURT ASSISTANT; CAROLINE NAFUNA

E. K. WABWOTO

JUDGE



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