



**Chepkuyeng v Chetambe (Environment & Land Case 41 of 2018)
[2023] KEELC 22489 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22489 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 41 OF 2018
MN GICHERU, J
DECEMBER 20, 2023**

BETWEEN

BRENDA JEROTICH CHEPKUYENG PLAINTIFF

AND

REDEMPTA SUSAN CHETAMBE DEFENDANT

JUDGMENT

1. The third defendant Brenda Jerotich Chepkuyeng, in her counterclaim dated 24/7/2019 seeks the following reliefs against the plaintiff Redempta Susan Chetambe Kehr.
 - i. A declaration that the plaintiff in the counterclaim is the absolute owner of L.R. Ngong/Ngong/4026, suit land.
 - ii. An order of eviction against the defendant to the counter claim whether by themselves, their employees, agents and/or servants or otherwise.
 - iii. In the alternative to (b) above a mandatory injunction compelling the defendant to the counterclaim whether jointly or severally or by themselves, their employees, servants and/or agents to otherwise vacate the suit property.
 - iv. A permanent injunction restraining the defendant to the counterclaim or anybody claiming through her from selling, disposing, transferring, changing, pledging, leasing, wasting, trespassing into, encroaching, fencing off, attempting to fence, entering, constructing, dumping of any material or howsoever dealing with the suit property.
 - v. The OCS Kiserian Police and/or the OCPD Ngong Police Division to enforce the orders issued by this court.
 - vi. Damages for trespasses together with interest thereon at court rates from the date of filing of this suit until the date of payment thereof in full.



- vii. Costs of the suit.
- viii. Such further relief that tis court may deem fit and just to grant.
2. The third Defendant's case against the plaintiff is as follows. On 15/5/2013 she entered into an agreement with the 1st defendant for the purchase of the suit land. The purchase price was Kshs. 6Million. She paid the full amount to the first defendant. She also paid stamp duty. The suit land was then transferred to the third defendant. When the third defendant tried to take possession of the suit property, she was resisted by the plaintiff. Every effort that the third defendant has made to take possession has been resisted by the plaintiff. She therefore prays for the orders as above.
3. In support of her case, the third defendant filed the following evidence:
 - i. Witness statement dated 19/7/2019
 - ii. Copy of agreement for sale dated 15/5/2013
 - iii. Copy of title deed in the name of first defendant dated 9/8/2011
 - iv. Copy of requests for RTGS transfers
 - v. Copies of official receipts issued by the 1st defendant
 - vi. Copy of title deed for the suit land in the 3rd defendant's name.
 - vii. Copy of the certificate of official search for the suit land in the name of the third defendant
4. The plaintiff filed a defence to the third defendant's counterclaim dated 25/11/2019 in which she avers that the sale of the suit land was fraudulent
5. On the date fixed for hearing, only the third defendant turned up. The plaintiff and her counsel did not attend court even though the date had been taken by consent. At the trial, the third defendant testified on oath and adopted her witness statement and documents as her evidence. She then closed her case.
6. In the written submissions dated 20/6/2023, the third defendant's counsel identified three (3) issues for determination as follows.
 - i. Whether the third defendant has proved her counterclaim on a balance of probabilities
 - ii. Whether the third defendant is entitled to the orders sought
 - iii. Whether the third defendant is entitled to damages for trespass and mesne profits.
7. I have carefully considered all the evidence adduced in this case by the third defendant I find that the issues as identified will determine the dispute. On the first issue, I find the third defendant has proved her claim against the plaintiff on a balance of probabilities. She is not only the registered owner of the said land but she has proved that she obtained the title to the land lawfully and procedurally. She paid for the land which was sold to her by the registered owner. As the registered owner of the suit land, the third defendant is vested with absolute ownership and the plaintiff's occupation of the said land without the consent of the third defendant is unlawful. The plaintiff has no right to occupy the suit land.
8. On the second issue, I find that the third defendant is entitled to an order of eviction of the plaintiff from the suit land. This is because the plaintiff's occupation if inconsistent with the third defendant's ownership.



9. On the final issue, I find that the mesne profits and the damages for trespass are not properly pleaded or quantified and proved. In the witness statement dated 19/7/2019, the said mesne profits and damages for trespass are only mentioned in passing at paragraph 10 as follows:

“The plaintiff is a trespasser on the subject property and I intend to recover damages and or mesne profits from the plaintiff at the appropriate time”

My understanding of this statement is that this not appropriate time. If this was the appropriate time, the amounts would have been stated so that the plaintiff would have responded to the claim. The third defendant has simply not pleaded enough on those two heads and has also not proved by evidence.

10. For the above stated reasons, I order as follows:

- a. The plaintiff be evicted from the suit premises on expiry of 60days from the date hereof if she will not have vacated voluntarily.
- b. The OCS Kiserian Police Station to enforce the execution order.
- c. Costs of the suit and for the plaintiff's eviction to the defendants. It is so ordered.

DELIVERED, SIGNED AND DATED VIRTUALLY ON THE 20TH DAY OF DECEMBER 2023 AT KAJIADO.

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M. N. GICHERU

JUDGE

