



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

ELC CIVIL SUIT NO.301 OF 2012

formerly NAKURU HCCC NO.127 OF 2010

GRACE NDURUMO NJOROGE.....PLAINTIFF

VERSUS

FRANCIS KINUTHIA KARIUKI.....DEFENDANT

JUDGMENT

1. The suit herein relates to a parcel of land known as **L.R NO.27/60 (IR NO.115306)** Gilgil Township town (hereinafter referred to as “the suit property”).

2. The plaintiff, **Grace Ndurumo Njoroge**, contends that the defendant, **Francis Kinuthia Kariuki**, in blatant disregard to her title and interest in the suit property has moved into the suit property and put up structures therein without her consent.

3. It is the plaintiff's case, that she gained rights to the suit property by virtue of having bought it from its original owner to wit, **Francis Ngugi Njoroge**. After she bought the suit property the vendor (Francis Ngugi Njoroge) executed a transfer in her favour and later the property was registered in her name.

4. It is the plaintiff's case that all attempts to get the defendant to vacate the suit property have been in vain and that owing to the defendant's unlawful dealings and refusal to vacate the suit property, she has suffered and continues to suffer loss and damage as she has been denied quiet possession and enjoyment of the suit property.

5. For the foregoing reasons the plaintiff prays for judgment against the defendant for:-

(i) an order of eviction in order to enable her take vacant possession of the suit property;

(ii) a declaration that the suit property is private property and that the defendants activities/dealings thereon constitute trespass to land;

(iii) a permanent injunction to restrain the defendant from further interfering, meddling or in any other way interfering with the her quiet enjoyment and dealings with the suit property;

(iv) damages for trespass to land;

(v) costs and interest;

(vi) **any other remedy the court may deem fit and just to grant.**

6. Through the statement of defence filed on **1st July, 2010** the defendant denies all the allegations leveled against him in the plaint and instead explains that the property was allocated to him by the Commissioner of Lands in 1997 (vide a letter dated 8th June, 1997). It is contended that following the said allocation, the defendant paid the requisite premium and has since been paying rent to the Commissioner of Land and rates to the local authority.

7. Concerning the structures constructed on the suit property, the defendant explains that he constructed a permanent house thereon in 1998 and that he has been living there with his family. In view of the foregoing, the defendant argues that the plaintiff's suit against him is misconceived and an abuse of the process of the court.

8. When the matter came up for hearing, the plaintiff informed the court that she filed the suit herein because despite having requested the defendant to leave the suit property, he refused to do so.

9. In support of her case, she reiterated that she bought the suit property from Francis Ngugi Njoroge (hereinafter referred to as the vendor) on **2nd April, 2009**. The court heard that the plaintiff and the vendor executed a transfer in respect of the suit property. The plaintiff produced the transfer as Pexbt 1. Subsequently the plaintiff got the suit property transferred to her. She produced the documents she used to facilitate the transfer namely, the valuation, the application for registration and the transfer document as Pexbt 2 (a) (b) and (c) respectively. Thereafter she was issued with a title deed which she produced as Pexbt 3.

10. The court further heard that the plaintiff has been paying land rent and rates in respect of the suit property. To prove those facts the plaintiff produced receipts in respect of the said transactions as Pexbt 4.

11. The plaintiff informed the court that after concluding the transaction herein, she visited the suit property and noted that somebody had fenced it. Since she did not know who had fenced it, she issued a demand and the defendant turned up.

12. She contacted the the vendor to know whether he had sold the suit property to the defendant. The vendor told him he had not. She also contacted the County Council of Nakuru whose records confirmed that she was the legal owner.

13. In urging the court to grant her the orders sought in this suit, the plaintiff contended that whereas she has title to the suit property, the defendant has not showed that he is lawfully on the suit property.

14. Despite having been severally indulged by the court, the defendant failed to present his defence within the time ordered by the court and at all. Consequently, the case closed without the court having heard the defendant's defence.

15. Following an order for filing of submissions, counsel for the plaintiff filed submissions which I have read and considered. The sole issue for determination is whether the plaintiff has made up a case for issuance of the orders sought.

16. Concerning the law applicable to the plaintiff's case, **Section 23** of the Registration of Titles Act, Chapter 281 Laws of Kenya, which is by virtue of **Section 106(3)** of the Registration of Titles Act, 2012 the law applicable to the plaintiff's claim, provides as follows:-

“A transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”

17. On the strength of the documents filed in support of the plaintiff's case namely, grant No.115306 for a term of 99 years from **1st May, 1992** issued to the vendor, a copy of the deed plan No.256051 dated **7th September, 2004**, form of statement of payment of rates and other charges dated **31st March, 2009**; county council of Nakuru receipt number MS0903-00580 for Kshs.3,980/= dated **31st March, 2009**; the transfer between the plaintiff and Francis Ngugi Njoroge dated **2nd April, 2009** and in the absence of any evidence in support of the defendant's case, I find the plaintiff to have established her case against the defendant on a balance of probabilities as by law required.

18. I say this because the title issued to her pursuant to the sale agreement executed between herself and the vendor is, by operation of law, conclusive evidence that she is the absolute and indefeasible owner of the suit property.

19. Although there is evidence that the defendant was in possession of the suit property long before the plaintiff bought it from its original owner, there being no evidence that he gained entry therein lawfully, his said occupation does not qualify to be an overriding interest to the plaintiff's interest thereon.

20. As concerns the prayer for general damages, I am persuaded that the plaintiff having been denied use of the suit property from 2009 to date is entitled to general damages for trespass to land which, given the special circumstances of this case, I assess at Kshs. 50,000/=.

21. The special circumstances of this case are that it is acknowledged that the defendant was in occupation of the suit property when the plaintiff bought it from its original owner. See the admission of that fact in the plaintiff's submission where it is stated:-

“Despite the fact that the defendant herein entered into the parcel of land and proceeded to construct his house prior to the plaintiff obtaining the parcel of land, the same was done without the consent of the vendor (Francis Ngugi Njoroge) who was the legal owner before selling the suit property to the plaintiff.”

22. The upshot of the foregoing is that the plaintiff suit is allowed to the extent contemplated herein above. The plaintiff is also awarded costs of the suit.

Dated, signed and delivered in open court at Nakuru this 30th day of January 2015.

L N WAITHAKA

JUDGE

PRESENT

Mr Kisila for the plaintiff

N/A for the defendant

Emmanuel Maelo : Court Assistant

L N WAITHAKA

JUDGE