



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 248 OF 2014

DANIEL NJOGU NYAGA PLAINTIFF

VERSUS

ALICE WANJIKU DEFENDANT

JUDGMENT

The plaintiff filed this suit on 12th August 2014 seeking the eviction of the defendant, her family members, tenants, assignees, agents, employees, servants and any other person from his parcel of land being No. BARAGWI/KARIRU/1462 plus costs of this suit.

It is the plaintiff's pleading that whereas he is the registered proprietor of the land parcel No. BARAGWI/KARIRU/1462 (hereinafter the suit land) the defendant, without any colour of right or any lawful justification, has trespassed onto the same, put up a building and destroyed the plaintiff's crops.

The firm of Ikahu Ngangah Advocates entered appearance for the defendant on 11th September 2014 but did not file any defence and on 7th October 2014, interlocutory judgment was entered for the plaintiff against the defendant. The record shows that by a notice dated 9th October 2014, the defendant's Advocates were notified about the entry of that interlocutory judgment. Thereafter, the case was listed for hearing before this Court on 9th March 2015 and the firm of Ikahu Ngangah Advocates were again served with a hearing notice on 19th February 2015 which they received under protest on the ground that counsel would be appearing in another case being Criminal Case No. 515 of 2013 at Siakago Court. However, there was no appearance either by the defendant or another counsel to hold Mr. Ikahu Nganga's brief. The plaintiff therefore proceeded to formally prove his case.

In his testimony, the plaintiff told the Court that he is the registered proprietor of the suit land and proceeded to produce the title deed to the same (Plaintiff's Exhibit 1), the Certificate of Search (Exhibit 2) and the Green Card (Exhibit 3). He added that in 2012, the defendant who is his neighbour destroyed their common boundary after which she trespassed onto the suit land, up-rooted his banana crops and proceeded to plant her own crops and erect a structure thereon claiming that the suit land is hers. That led to the filing of this suit.

I have considered the plaintiff's un-controverted evidence. It is not in dispute that the plaintiff is the owner of the suit property as he has the title deed to the same (Exhibit 1). He is therefore entitled to all the rights and privileges that go with the registration of the property in his names. That right includes the right to eject trespassers. It is his evidence that the defendant who is his neighbour has trespassed onto the suit land and not only damaged his crops but also proceeded to put up a structure/building on the same. That evidence remains un-rebutted because the defendant did not file any defence to the plaintiff's claim. Believing the plaintiff's un-controverted evidence as I do, I am satisfied that he has established

his case against the defendant as required in law. I am satisfied that the defendant has trespassed onto the plaintiff's land as claimed. It is however not clear whether the defendant has put up a building or structure on the suit land. In paragraph 4 of the plaint, it is claimed that the defendant has "**erected a building and other erectment**" on the suit land while in paragraph 7, the plaintiff refers to them as "**structures**". If they are structures, it is not clear if they are temporary or permanent in nature.

Ultimately therefore, believing the plaintiff's evidence as I do, I enter judgment for him as prayed in the plaint. The defendant is given 45 days from the date of the decree being served on her to remove herself and whatever structures she has put on the suit land and in default, the plaintiff shall be at liberty to evict her and remove those structures.

Costs to the plaintiff.

B.N. OLAO

JUDGE

20TH MARCH, 2015

20/3/2015

Before

B.N. Olao – Judge

Gichia – CC

Mr. Miano for Plaintiff – present

Mr. Ngangah for Defendant – absent

COURT: judgment delivered this 20th day of March, 2015 in open Court.

Mr. Miano for Plaintiff present

Mr. Ngangah for Defendant absent

Right of appeal explained.

B.N. OLAO

JUDGE

20TH MARCH, 2015