



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**HIGH COURT CIVIL CASE NO. 426 OF 2011**

**DICK KARIUKI MUGO**

**JANE WANJA MUGO** (Suing as the legal representatives of the estate of Lucian Nyaga Mugo).....**PLAINTIFFS**

**VERSUS**

**MRS. THANDE**

**MR. JOHN KIMANI**

**MR. GEORGE NDIBA**

**MR. PETER THANDE.....DEFENDANTS**

**JUDGMENT**

1. This suit was commenced by way of plaint filed on 4<sup>th</sup> October, 2011. The Plaintiffs sought an order for eviction of the defendants and or any person claiming under them from the suit property and handing over vacant possession to the Plaintiffs, an order that the Defendants demolish and or remove any illegal structures from L.R. No. Dagoretti/Kangemi/1201 the suit property, costs of this suit and any other or further relief that this court may deem fit to grant. Despite being served with summons, the defendant neither entered appearance nor filed defence. Interlocutory judgment was then entered and the suit went on formal proof.
2. The Plaintiffs' case is that they were on 30<sup>th</sup> April, 2008 issued with a grant of letters of administration intestate in respect of Lucian Nyaga Mugo deceased for purposes of administering their late father's estate pursuant to the Law of Succession Act. Amongst the property is L.R. No. Dagoretti/Kangemi/1201. Dick Kariuki Mugo (PW1) the 1<sup>st</sup> Plaintiff, produced in evidence as exhibits a copy of grant of letters of administration and a copy of the title deed to the suit property. It is alleged that after obtaining the grant the Plaintiffs embarked on identifying their deceased father's property and discovered that the Defendants had illegally entered into the suit property and erected structures which they rented out. It is alleged that despite being given notice to give vacant possession, the Defendants have refused to do so.
3. The Plaintiffs' submissions were a reiteration of the averments in the Plaint and the testimony of the 1<sup>st</sup> Plaintiff. The Plaintiffs cited Section 27 of the Registered Land Act (Repealed). The said section provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto. Trespass is an actionable claim therefore proof of ownership is a prima facie proof of possession. The Plaintiffs herein were therefore under duty to prove that the Defendants had unjustifiably entered into the suit property.

4. As stated earlier, the defendants neither entered appearance nor filed a defence. The case of the plaintiff therefore remains uncontroverted. In his testimony, the plaintiff produced documentary proof of their father's ownership of the suit property. I see no reason why the plaintiffs' case for vacant possession should not succeed. I also give costs of the suit and interest.
5. In the end judgment is entered in favour of the Plaintiffs and against the Defendants in the following terms:-

a. The Defendants herein namely

1. MRS. THANDE
2. MR. JOHN KIMANI
3. MR. GEORGE NDIBA
4. MR. PETER THANDE

together with those persons claiming under them, are ordered to vacate L.R. No. Dagoretti/Kangemi/1201 within 30 days from the date of this judgment default to Plaintiff are at liberty to have them forcefully evicted.

- b. The Defendants are hereby ordered to demolish all their structures standing on L.R. No. Dagoretti/Kangemi/1201 within 30 days from the date of this judgment in default the Plaintiffs will be at liberty to demolish those structures at the Defendants' costs.
- c. The Plaintiffs to have costs of the suit.
- d. The Plaintiffs are directed to ensure that service of the judgment/decree is properly effected upon the Defendants personally by a competent process server before executing prayers (a) and (b) above.
- e. Mention on 16<sup>th</sup> June, 2015 to confirm compliance of (d) above.

Dated, Signed and Delivered in open court this 18<sup>th</sup> day of May, 2015.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiffs

..... for the Defendants