



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 937 OF 1988

DAMARIS WANGARI GITAU

ANNAH MURUGI MURAGE suing on behalf of

RIRUTA MUTHIORA COMBINED WOMEN GROUPPLAINTIFFS

VERSUS

SEVENTH ADVENTIST CHURCH E.A UNION1ST DEFENDANT

THE COMMISSIONER OF LANDS.....2ND DEFENANT

THE ATTORNEY GENERAL3RD DEFENANT

JUDGMENT

The plaintiff's suit having been dismissed in earlier proceedings what remained was the hearing of the counterclaim of the first defendant as against the plaintiffs. From the record before me there was no defence filed by the plaintiffs to the counterclaim. When the counterclaim was listed for hearing on 24th September, 2015 the plaintiffs were absent.

Having confirmed that they were duly served with the hearing notice and an affidavit sworn by Henry Ohenyo filed in that regard, the court was satisfied that the first defendant should proceed.

At the centre of these proceedings is a parcel of land title No. Dagoretti/Riruta/S707. It is the first defendant's case that it is the registered owner of the said parcel of land but the plaintiff's have trespassed thereon and maliciously destroyed a temporary structure used by the 1st defendant's followers for worship.

The first defendant therefore prays that the plaintiffs be ordered to remove any property they claim to belong to them and which is on the first defendant's property and vacate the premises. In addition the 1st defendant prays that an eviction order be issued against the plaintiffs to vacate the said property.

One Dr. Caleb Oburu Orange gave evidence on behalf of the 1st defendant. He produced his witness statement and adopted it as his evidence in chief. He also produced a bundle of documents in support of the 1st defendant's claim. Dr. Orange a lecturer at Egerton University is the presiding first elder of Riruta Satellite SDA Church which is a branch of the 1st defendant.

He produced the letter of allotment and the certificate of lease relating to the suit property in the name of

the 1st defendant. He also produced documents relating to the expenses incurred in putting up the structure on the piece of land.

As the plaintiffs did not appear during the trial the evidence of Dr. Orange remains uncontroverted. I have no reason to doubt his evidence. I heard his testimony and watched his demenour. I have no doubt that what he told the court was the truth. In the end, I am satisfied that the 1st defendant has proved its case as against the plaintiffs on the counterclaim to be entitled to judgment thereon.

On special damages the 1st defendant pleaded particulars of loss and damage. A document has been annexed in the bundle signed by Pastor Peter Njuguna giving a breakdown of the cost of materials used to build the structure said to have been destroyed by the plaintiffs. The expenses amount to Kshs. 70,105/=. One would have expected that receipts issued for the purchase of those items would also be produced in evidence. Since special damages must be specifically pleaded and strictly proved, I am not satisfied that the annexed list meets that threshold. Special damages therefore have not been established as required.

Accordingly the 1st defendant is entitled to vacant possession of the suit property and the plaintiffs are hereby restrained from entering remaining or building or in any other manner interfering with the suit property. The plaintiffs shall be served with an eviction notice effective 30 days from the date of this judgment.

In the event of non compliance, the 1st defendant shall execute the eviction order. The first defendant shall have the costs of the suit.

Dated and delivered at Nairobi this 24th Day of November, 2015.

A.MBOGHOLI MSAGHA

JUDGE