



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO.530 OF 2015

HANNAH WANJIRU KAMAU.....PLAINTIFF

VERSUS

JANE WANJA RURAYA.....1ST DEFENDANT

LAWRENCE BABU.....2ND DEFENDANT

CHRISTOPHER GACHENE.....3RD DEFENDANT

TERESIA KINYUA.....4TH DEFENDANT

JOYCE WANJA.....5TH DEFENDANT

JUDGEMENT

1. By a plaint dated 28th January 2015. The Plaintiff seeks for judgement against the Defendants jointly and severally for:-

- a) *A declaration that the Plaintiff's title deed with respect to Title Number RUIRU/RUIRU EAST BLOCK 2/5173 measuring 0.400 hectares ("the suit property") is conclusive evidence of ownership and the Plaintiff is the absolute and indefeasible owner of the suit property.*
- b) *A declaration that that the Defendants whether by themselves or their servants or agents or otherwise howsoever are wrongfully in occupation of the suit property and are accordingly, trespassers on the same.*
- c) *A declaration that the Defendants whether by themselves or their servants or agents or otherwise howsoever are not entitled to remain on the suit property.*
- d) *A permanent mandatory injunction to evict the Defendants, their servants, officers, employees and/or agents from the suit premises.*
- e) *A permanent mandatory injunction restraining the Defendants whether by themselves or their servants or agents or otherwise howsoever from trespassing onto the suit property.*
- f) *An order that the OCS Ruiru Police station does assist forthwith in the due execution of these orders.*
- g) *An order that vacant possession in favour of the Applicant be granted in favour of the Plaintiff.*
- h) *General damages for trespass and /or mesne profits for loss of use of the suit property.*
- i) *Costs of this suit together with interest thereon at such rate and for such further period as this Honourable court may deem fit to grant.*

The Plaintiff's Case

2. The Plaintiff's case is that she is the registered owner of Title **No.Ruiru/Ruiru East Block 2/5173** situated in Ruiru. She contended that on or about 2012, while she was overseas, the Defendants wrongfully, unlawfully and without any color of right or justification whatsoever, invaded, encroached onto, trespassed and took possession of the suit property by fencing, cultivating, putting up permanent structures and

have wrongfully remained in possession thereof.

3. She contended that by virtue of the Defendants' trespass, there has been a constant dispute between her and the Defendants which has escalated to the local administration therefore none of the Defendants enjoys or has ever enjoyed peaceful, uninterrupted and /or exclusive occupation of the suit property. She further contended that she has suffered loss and damage by reason of the Defendants' trespass.

4. In paragraph 8 of the Plaintiff the particulars of loss and damage are given as:-

(a) *The Plaintiff has been deprived of the use and quiet enjoyment of the suit property;*

(b) *The Defendants' trespassing and unlawfully plaintiff food crops on the suit property;*

(c) *The Defendants have illegally erected permanent structures and fences on the suit property without the Plaintiff's consent.*

The Defendants' case

5. The 1st, 2nd, 3rd and 5th Defendants entered appearance in person vide their joint memorandum of appearance dated 28th July 2015. They filed separate statements of defence all dated 7th August 2015.

6. Their case is that they all bought their respective plots being subdivisions of the suit property from one Jane Wanjiku Ngugi. They all contended that they have acquired title to their respective plots by adverse possession having had uninterrupted possession for over fourteen (14) years.

7. The 2nd Defendant contended that he bought plot No.14 measuring 50 by 60 feet for Ksh.65,000 while the 3rd Defendant stated that he bought plots No.7 and 8 of 40 by 60 feet each for Kshs.150,000/=. The 5th Defendant claimed that she bought plot No.10 of 40 by 60 feet at Kshs.75,000/=.

8. The 4th Defendant neither entered appearance nor filed a defence.

The Plaintiff's evidence.

9. PW1; Robert Mugendi Mbuba the Registrar of lands attached to Ruiru land registry produced the original register for land parcel **No.Ruiru/Ruiru East Block 2/5173** and told the court that the title to the suit land measuring approximately 0.4 hectares was issued to the Plaintiff on 8th April 2014.

10. He added that all the details correspond with the green card which show that Nyakinyua Investment Limited allocated the suit plot to the Plaintiff. He further stated that the parcel file has an original clearance letter dated 9th September 2016 from Nyakinyua Investment Limited confirming the Plaintiff as the owner of the suit plot.

11. When cross-examined and referred to the Title deed, he stated that it was issued on 8th April 2014 but the registry map sheet number is not there. He stated that he did have the clearance letter which prompted them to issue the title deed. When referred to the title of Jane W. Ngugi, he stated that it was opened on 8th January 2003 and title **Ruiru/Ruiru East/Block 4 /5173** measuring 0.4 hectares was issued on 8th April 2003.

12. When re-examined, he stated that the lack of a registry map sheet number does not invalidate a Title deed and it does not affect ownership .He also stated that the title deed issued on 8th April 2003 is not in their records and it is not possible to issue two titles in respect to the same property since one has to be surrendered. He stated that they do not have the register in respect of Jane Wanjiku Ngugi in their records.

13. PW2, Hanna Wanjiru Kamau, the Plaintiff, testified on 28th November 2020. Her witness statement dated 28th January 2015 was adopted in her evidence in chief. She stated that she is the rightful owner of the suit property which she acquired by virtue of being a shareholder of Nyakinyua Investments Limited. She further stated that she travelled overseas in 2012 only for the Defendants to trespass on her property while she was away. She stated that when she came back, she tried to have local administration resolve the dispute but the Defendants remained on her property but they did not enjoy peaceful occupation since she kept demanding that they leave her property and formally sent them a demand notice through her Advocates in 2014. She also stated that she is in possession of a Title deed to the suit property as well as an official search which shows that she is the absolute owner.

14. She told the court that she got a call from Annabel Wambui who told her that some people were fencing her land and she came back to Kenya in 2014 and tried to have the dispute resolved. She seeks that the prayers in the plaint be allowed.

15. When cross-examined, she told the court that she was a member of Nyakinyua Investments Limited-Nyakinyua Gatundu and she was given a ballot and a share certificate. She further stated that she returned the share certificate and she was allocated the land in 1980 and a title deed was issued. She stated that she was shown her land by the surveyor.

16. She stated that she later traveled out of the country but before 2012, none of the Defendants had interfered with the property. She came back in February 2014 only to find the Defendants constructing on one portion while the other portion had been fenced. She further stated that she went to the Chief and the Defendants who were summoned came with certificates from Ichaweri Family Investments claiming that

Jane Ngugi had sold them the land but she said Jane did not appear at the Chief's office.

17. She also stated that she got her title in 2014 but she could have gotten it earlier. She stated that her Advocates demanded that the Defendants vacate the suit property as three people had trespassed but one person has since left.

18. When re-examined, she stated that she travelled out of the country before 2012 and when she left, nobody was on her land. She further stated that they went to the chief who advised the Defendants to buy the land from her but they did not take the advice and did not make a proposal to her. She added that she does not know Jane Wanjiku Ngugi.

The Defendants' evidence

19. DW1, Jane Wanja Ruraya was the 1st Defendant. It was her testimony that in 2008, somebody told her that there was a plot being sold at Juja and the person took her to the office of a woman by the name Jane Wanjiku Ngugi who was selling ¼ acre plots and that 12 of them bought from her. She stated that she bought a plot at Kshs.75,000/= and put up a home in 2002 and later her neighbors put up their houses too and nobody told them to leave until 2014 when this suit was instituted. She has been on the plot for more than 12 years. She testified that Jane Wanjiku Ngugi gave her a certificate and she owns her plot and she does not know the Plaintiff. She only saw her in court.

20. When cross-examined, she stated that she was given a certificate by Jane Ngugi and that the plots were 60 ft by 40ft and that 12 people bought the plots. She stated that that the seller did not give them a sale agreement and that they did not conduct a search before buying the property but the seller later gave them a copy of her Title deed issued on 13th July 1995. She stated that she did not know that a title must have two pages. She also stated that she paid Jane Wanjiku Ngugi Kshs 75,000/=cash in 2002.

21. She further stated that she constructed an iron sheet house in 2002 but she now has a permanent house with single rooms in plot No. 9. She stated that she has not completed transfer due to this case and that she never went to the land control board to seek consent. She added that she is not a trespasser as she bought the suit plot and she has been on the plot for more than 12 years uninterrupted.

22. When re-examined, she reiterated that she bought her plot on the suit land from Jane Wanjiku Ngugi who gave her a certificate after paying the full purchase price and she has since constructed seven (7) single rooms on the suit plot which she leases out to tenants. The Plaintiff has never evicted them from the land.

23. DW2, Jane Wanjiku Ngugi testified on 21st April 2021. She told the court that the suit property was allocated to her by Nyakinyua Investments Limited in 1984, where she got 1acre equivalent to her share after balloting.

24. She further stated that she was issued with a title deed in 1996 and utilized the property but she later subdivided it into 16 plots measuring 40ft by 60ft. She formed a company called Ichaweri Family Investments which she used to sell all the plots and gave the buyers certificates.

25. It was her testimony that she sold a plot to the 1st Defendant in the year 2001 for Kshs.75,000/= and also sold to the 2nd and 5th Defendants and others but she does not know the Plaintiff and has never seen her as she has never claimed that the suit land is hers. She stated that she was on the land for many years and the Plaintiff never claimed the land. She prayed that the case be dismissed.

26. When cross-examined, she stated that the suit property is hers and she has a copy of title deed issued on 13th July 1995 by a land registrar by the name Akwella but it does not have other pages. She further stated that she conducted a search but she has not filed it in court. She stated that she is a shareholder of Nyakinyua Investment Limited and she has a certificate.

27. She also stated that she sold the suit plots to the Defendants and 11 others who are not sued and whose names she cannot recall but she gave each a certificate from Ichaweri Family Investments. She stated that she has nothing to show that she subdivided the land as the mutation forms have not been forwarded to the surveyor; Mr. Njuguna who did not give him anything to prove subdivision but she nonetheless sold the portions and none of the 16 buyers has a title.

28. When re-examined, she stated that the subdivision was done in 2001 but he does not recall the surveyor who did the survey but he showed him the a copy of title. She also stated that she gave the Defendants a copy of title and share certificates. She stated that she got the land from Nyakinyua Investments Limited where she was a member.

29. DW3, Lawrence Babu the 2nd Defendant adopted his witness statement dated 7th August 2015 and the bundle of documents dated 25th January 2019.

30. When cross-examined, he stated that he bought subdivided plots No.14 and 15 measuring 40 by 60 feet each for Kshs.65,000/= from Jane Wanjiku Ngugi. He paid in cash. He added that they did not reduce the agreement into writing and he went into the land in the year 2002. It was his testimony that he did not do a search before buying the property and he does not have a Title deed but he has a share certificate from Ichaweri Family Investments. He constructed a stone house of about four (4) bedrooms. She also stated that he has resided there for more than 13years. He prayed that the Plaintiffs title be cancelled.

31. When re-examined, he stated that he entered the land in 2002 and no one has claimed it.

32. DW4 is Joyce Wanja Kilonzo is the 5th Defendant. Her witness statement dated 7th August 2015 and a list of documents dated 23rd March 2017 were adopted as part of her of evidence in chief.

33. When cross-examined, she stated that she resides at plot No.10 on the suit land, which she bought in 2001 from Jane Wanjiku Ngugi and she has constructed a 3 bedroomed house.

34. She stated that the seller had a copy of title and she issued her with a certificate but she did not conduct a search at the lands registry and she could not recall if the copy of Title was complete with all the pages.

35. She stated that she paid the seller a lump sum in cash but they did not reduce the agreement into writing. She stated that she has been on the suit land for more than 14 years and prayed that the plaintiff's title be cancelled.

36. At the close of the oral testimonies, parties tendered written final submissions.

The Plaintiff's written submissions

37. They are dated 29th September 2021. The Plaintiff framed the following issues for determination:-

a) Whether the Plaintiff is the registered owner, acquired and holds an indefeasible title over Ruiru/Ruiru East Block 2/513.

b) Whether the Defendant can claim adverse possession over the suit property.

c) Whether the Defendant has encroached on the Plaintiff's property, and if so, whether the Defendants are trespassers on the Plaintiff's property?

d) Whether the Plaintiff is entitled to the prayers in the plaint?

38. The Plaintiff submitted that she produced the certificate of title as conclusive proof that she is the absolute indefeasible owner of the suit thus she enjoys all rights and privileges appertinent to a proprietor under Section 24(a) of the Land Registration Act.

39. She further submitted that she led the court through the process of acquisition of her title to the suit property and there was no fraud whatsoever in her acquisition of the suit property. She cited the case of **Esther Ndegi Njiru & Another v Leonard Gatai [2014] e KLR** to submit that the title issued to her by the registrar is prima facie evidence that she is the absolute and indefeasible owner of the suit property.

40. It was her submission that the Defendants' claim to the suit property is marred with fraud since the alleged vendor Jane Wanjiku Ngugi whom they claim from produced an incomplete title deed in her name and an undated transfer to the 2nd Defendant which had no photograph of the transferee, execution, attestation, valuation, stamp duty assessment nor title. She further submitted that the Defendants had no sale agreements, transfers or payment receipts to account for the alleged purchase transactions. She added that the Land Registrar Ruiru also confirmed that he was not aware of any entry in the land register of the suit property relating to the Defendants and confirmed that the Plaintiff is the registered owner.

41. She also submitted that the Defendants do not qualify to be bona fide purchasers for value as defined in the case of **Joseph Muriithi Njeru v Mary Wanjiru Njuguna & Another [2018] e KLR** since their evidence shows that they did not undertake any due diligence prior to their alleged purchase of the suit property and that there was no evidence that they paid consideration.

42. On the issue whether the Defendants can claim adverse possession over the suit property, she submitted that the 1st, 2nd, 3rd and 5th Defendants' claim that they had uninterrupted occupation of the suit property for the last 14 years and if the Plaintiff had any right, then it was extinguished under Section 37 of the Limitation of Actions Act cannot stand.

43. It was her submission that an action for adverse possession can only be brought against the registered proprietor of the land by occupants who have been in exclusive, continuous and uninterrupted use of the property. She added that such a claim cannot succeed because the Defendants do not meet the conditions to be met to succeed in a claim for adverse possession as explained by the Court of Appeal in **Mtana Lewa v Kahindi Ngala Mwagandi [2015] e KLR**.

44. She submitted that the Defendants did not enjoy peaceful and uninterrupted use of the suit property since she verbally and in person tried to request the Defendants to vacate the premises and even involved the local administration to settle the dispute but the Defendants neglected to leave.

45. On the issue whether the Defendants are trespassers on the suit land, she submitted that they are trespassers and even if they were to claim that the Plaintiff's claim for trespass is time barred under Section 4(2) of the Limitation of Actions Act, which provides that an action for trespass should be brought within 3 years from the date that the cause of action arose, her claim is for continuing trespass which has no time limitation under the same provision. She relied on the cases of **Eliud Njoroge Gachiri v Stephen Kamu Ng'ng'a [2018] e KLR** and the case of **Gladys Koskey v Benjamin Mutai [2017] e KLR**.

46. She also submitted that she has proven her case on a balance of probability and is therefore entitled to all the orders sought in the plaint.

The 1st, 2nd and 5th Defendants' written submissions

47. They are dated 7th July 2021. The 1st, 2nd and 5th Defendants submitted that the Plaintiff did not prove that she was a shareholder of Nyakinyua Investments Limited. They pointed out that she did not prove what her shareholdings were and she did not produce a membership

card or show her registration number.

48. They added that her title was issued in 2014 pursuant to the clearance letter dated 21st March 2013 from Nyakinyua Investments Limited and according to the said letter, Nyakinyua Board of directors scrutinized her documents and established that she was the rightful owner of the suit property.

49. They argued that since the property was disputed, it would have only been fair if Nyakinyua Investment Limited also scrutinized the documents in Jane Wanjiku Ngugi's possession and since they did not, the letter dated 21st March 2013 is one sided and there are no minutes accompanying it.

50. On the issue of their claim for adverse possession, they submitted that while Jane Wanjiku Ngugi testified in their favour that they entered their respective plots between 2001 and 2002, the Plaintiff does not account for the years between 2001 and 2014 as she only talks about the year 2012. They added that there is no proof of interruption and no proof that the Plaintiff tried to solve the dispute between her and the Defendants through the local administration.

51. They asked the court to consider that there are permanent structures and electricity bills that date as back as 2008. It was also their submission that mere production of title does not accord the Plaintiff land that they claim and which they acquired many years earlier than her.

52. I have considered the pleadings and the evidence on record. I have also considered the written submissions filed on behalf of the parties and the authorities cited. The issues for determination are:-

(i) Who is the registered and/or legal proprietor of the suit land?

(ii) Is the Plaintiff entitled to the reliefs sought?

(iii) Who should bear costs of this suit?

53. P. W. 2, Hannah Wanjiru Kamau, the Plaintiff told the court that she is the registered proprietor of Ruiru/Ruiru East/Block 2/5173 measuring 0.400 hectares (herein after referred to as "the suit Property"). She told the court that she acquired the land as a shareholder of Nyakinyua Investment Limited. She told the court after balloting for the plot, she returned the share certificate to the company. She further stated that the land was allocated to her in 1980.

54. That in or about 2012 she left the country and that is when the Defendants wrongfully entered her land. She came back and tried to have the local administration intervene but the Defendants refused to vacate hence this suit.

55. She produced her copy of title deed in her name issued on 8th April 2014, a certificate of official search dated 2nd May 2014 showing that she is the registered owner of the suit property. She also relied on a letter dated 21st March 2014 by Nyakinyua Investments Limited to the Registrar of Lands Thika confirming that the Plaintiff is the owner of Ruiru/Ruiru East/Block 2/5173.

56. P.W.1 Robert Mugendi Mbuba, Land Registrar attached to Ruiru Land Registry told the court that the records in the Land Registry confirm that Hannah Wanjiru Kamau is the owner of Ruiru/Ruiru East/Block 2/5173.

57. He told the court that the details in the title deed issued to the Plaintiff correspond to the details in the green card (Land Register). He stated that the green card was opened on 8th April 2014 in the name of Nyakinyua Investments Limited and allocated to the Plaintiff. He also stated that from the parcel file, there is a clearance certificate from Nyakinyua Investments Limited confirming the Plaintiff as the owner. He produced the copy of green card and the letter as exhibits P1 and P2 respectively.

58. When he was referred to a copy of title deed issued to Jane Wanjiku Ngugi on 13th July 1995, he stated that there were no records in the Land Registry showing that the title deed was issued. He told the court the details in the title deed to Jane Wanjiku Ngugi were not backed by any records in the Lands Registry. He confirmed that the register had not been opened in 1995.

59. When he was cross examined by the Defendants' counsel he stated that the fact that Registry Map Sheet Number is missing from the Plaintiff's title deed does not invalidate the title. He told the court the purpose of the map sheet is to guide a surveyor on where to find the parcel of land on the map. He confirmed that there are no records to back up the title to Jane Wanjiku Ngugi in the Registry.

60. From the evidence of PW1 and PW2 it is clear that the Plaintiff can explain the root of her title.

61. DW2, Jane Wanjiku Ngugi told the court she was given the land by Nyakinyua Investments Limited in 1984. There is a title deed in her name issued on 13th July 1995. The same is signed by a Land Registrar but other details like her number are not visible. The same has also the first page. The rest of the pages are missing. The original copy of title deed was not availed in this court. She had no explanation for failure to avail the same.

62. In her witness statement Jane W. Ngugi states that she became the registered owner of the land in Kiambu Land Registry on 8th April 2002. This is a contradiction as to the date of issue on the title deed availed.

63. DW2, further stated that she subdivided the suite property into plots and sold to various people including the Defendants herein. She

claimed to have been on the land for many years. When she was cross examined by the Plaintiffs' counsel she stated she did not avail a certificate of official search in court. She also stated that she had nothing to show that subdivision was done. She said the mutation forms were given to a Mr. Njuguna who did give them back. She again stated that she did not recall the surveyor who did the subdivision.

64. DW2 claims to have been allocated the suit property by Nyakinyua Investment Limited. She exhibited a share certificate No 5133. It shows that she owns one hundred ordinary shares of 20 shillings each. It does not refer to the suit property. She did not produce a letter from the said land buying company confirming that she is the owner of the suit property and that a title deed ought to be issued in her name. The Plaintiff has such a letter. In essence DW2 Jane Wanjiku Ngugi cannot explain how she acquired the suit property.

65. The Plaintiff has a title deed in her name backed by the records from the land registry. I find that she is the legal and lawful registered owner of Ruiru/Ruiru East/Block 2/5173. Section 26 of the Land Registration Act, 2012 provides that:-

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or*
- b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.*

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

66. The 1st, 2nd, 3rd and 5th Defendants stated that they bought their respective plots from Jane Wanjiru Ngugi. They produced share certificates from Ichaweri Family Investments, a company allegedly incorporated by Jane Wanjiku Ngugi for purposes of disposing of the said land.

67. DW1 Jane Wanja Ruraya said she bought the plot in 2001 and paid Kshs.75,000 in cash to Jane Wanjiku Ngugi. She admitted that the agreement of sale was not reduced into writing. She claimed to have been on the land for more than twelve (12) years. DW3 and DW4 gave the same story.

68. It is clear that though they claim to have bought the plots from Jane Wanjiku Ngugi, there are no agreements of sale to confirm the same. this is in contravention of **Section 3(3)** of the Laws of Contract Act which provides that:-

“No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; an

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party: Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.”

69. In the absence of any sale agreements, the Defendants claim that they have been in the land since 2002 is unsupported. They also claimed to have paid in cash to DW2. Again there is no proof of payment.

70. The Plaintiff was categorical that by the time she left the country in or about 2012 the suit property was intact. She only got a call informing her that someone was fencing her plot. I find that the plaintiffs version of event is believable.

71. The Defendants claim for adverse has not been established as they were unable to prove when they entered the land. The photographs exhibited cannot tell when they entered the land. The transfer to DW1, Jane Wanja Ruraya is undated but the year 2014 is there. The same is not witnessed by anybody. Only the transferor has signed. One electricity bill to DW1 shows that it is for Plot No 2723/009 Murera. It is hard to tell if this is in relation to the suit property.

72. **Section 7** of the Limitation of Actions Act, provides that:-

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”

73. The Court of Appeal explained the conditions to be met in order to succeed in a claim for adverse possession in **Mtana Lewa vs Kahinndi Ngala Mwandu [2005] eKLR**, as follows:-

In Kimani Ruchine vs Swift Rutherford & Co. Ltd (1980) KLR it was stated on this point that;

“The Plaintiffs have to prove that they have used this land which they claim, as of right: nec vi, nec clam, nec precario.....So the plaintiffs must show that the company had knowledge (or the means of knowing, actual or constructive) of the possession or occupation. The possession must be continuous. It must be broken for any temporary purpose or by any endeavours to interrupt it or by any recurrent consideration; see Wanyoike Gathire vs Berverly (1965) EA 514, 518, 519 per Miles, J”

74. Similarly in **Wilson Noroge Kamau vs Nganga Muceru Kamau [2020] e KLR** the Court stated as follows:-

“In Kasuve vs Mwaani Investments Limited & 4 Others 1 KLR 184, the Court of Appel restated what a Plaintiff in a claim for adverse possession has to prove:

“In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition”.

75. It is the Plaintiff’s evidence that she verbally and in person requested the Defendants to vacate the suit property but they refused and or neglected to do so. She even involved the Provincial Administration, to get them to vacate but it bore no fruits. The Defendants have failed to prove that they enjoyed peaceful and uninterrupted use of the suit property. I find that their claim for adverse possession fails.

76. Having stated earlier that the Plaintiff is the legal and lawful proprietor of the suit, she is entitled to the reliefs sought. The Defendants admit that they are on the suit property. The only documents they have are share certificates from Ichaweri Family Investments. As stated earlier Jane Wanjiku Ngugi is not the owner of the suit property. This makes the Defendants trespassers on the suit property.

77. They were duped into buying the plots from someone who had no rights to the suit property. They encroached on the suit property in or about the year 2012. They entered without the consent of the owner and erected structures, cultivated and lived therein. This was a case of continuing trespass. The Plaintiff is entitled to damages for trespass.

78. In the case of **Africa Gospel Church Chebocho (Registered Trustees) vs Paul Mutai alias Laigong [2017] e KLR**, the court stated as follows:-

“Turning to the general damages, I rely on the case of Park Towers Ltd vs John Mithamo Njika and 7 Others eKLR where Mutungi J stated as follows:

“I agree with the learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded general damages. He court in such circumstances is under a duty to assess the damages awardable depending on the unique circumstances of each case”.

Similarly in **Dancan Nderitu Ndegwa vs Kenya Pipeline Company Limited & Another [2013] e KLR**, the Court stated as follows:-

“On the issue of quantum of general damages, once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary to for the court to award general damages”.

I award Kshs.200,000/- which I think is reasonable.

79. Costs follow the event. Section 27(1) of the Civil Procedure act states that awarding of costs shall be in the discretionary of the court. In the case of **Joseph Kiruja Maingi vs Rose Nambura & 2 Others [2021] e KLR** where the court while according costs to the successful party stated as follows:-

“29. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the Civil Procedure Act (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See Hussein Janmohamed & Sons vs Twentsche Overseas Trading Co. Ltd [1967] EA 287. The court finds no good reason why the successful party should not be awarded costs of the appeal.

I find that the Plaintiff is entitled to costs of this suit.

80. I find that the Plaintiff has proved her case as against the Defendants on a balance of probabilities.

81. Accordingly, Judgment is entered for the Plaintiff as against the Defendants jointly and severally as follows:-

(a) That a declaration is hereby issued that the Plaintiff’s title deed with respect to Title Number RUIRU/RUIRU EAST BLOCK 2/5173 measuring 0.400 hectares (“the suit property”) is conclusive evidence of ownership and the Plaintiff is the absolute and indefeasible owner of the suit property.

(b) That a declaration is hereby issued that that the Defendants whether by themselves or their servants or agents or

otherwise howsoever are wrongfully in occupation of the suit property and are accordingly, trespassers on the same.

(c) That a declaration is hereby issued that the Defendants whether by themselves or their servants or agents or otherwise howsoever are not entitled to remain on the suit property.

(d) That the Defendants, their servants and/or agents are hereby directed to vacate the suit property Ruiru/Ruiru East/Block 2/5173 within ninety (90) days from the date of this Judgment failure to which the Plaintiff be at liberty to use lawful means to evict them.

(e) That a permanent injunction is hereby issued restraining the Defendants whether by themselves or their servants or agents or otherwise howsoever from trespassing onto the suit property.

(f) General damages for trespass Kshs.200,000/-.

(g) Costs of the suit and interest.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 17TH DAY OF MARCH 2022.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Wachira for the Plaintiff

Mr. Kinyanjui for Mr. Kinuthia for the Defendants

Steve - Court Assistant