



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ELCOS No. 55 OF 2020

JOHN WAIGANJO KARIUKI

(Suing as the legal representative

of the estate of Esther Wangari

Kariuki (Deceased)).....PLAINTIFF

VERSUS

JANE NYAMBURA KANUTHU.....DEFENDANT

JUDGMENT

1. By Originating Summons (OS) dated 30th October 2020, the plaintiff seeks the following orders:

1. *[Spent]*

2. *THAT the Honourable court be pleased to declare the Defendant either in person, his agents, servants or any other person claiming under him as trespassers in all that property known as Mau Summit/Molo Block 1/118 Mutirithia and subsequently an order of eviction requiring the Defendant to give vacant possession of all that property known as Mau Summit/Molo Block 1/118 Mutirithia;*

3. *THAT the Honourable court do order the (OCS) Molo Police Station to provide security to the Plaintiff while evicting the Defendant.*

4. *THAT there be an order for the Defendant to cede vacant possession of all that property known as Mau Summit/Molo Block 1/118 Mutirithia to the Plaintiff herein and the immediate ejection and/ or eviction therefrom of the Defendant and any other person claiming under him;*

5. *THAT an order of permanent injunction do issue restraining the Defendant by himself, servants, agents and/or employers from trespassing, occupying, hiring, continuing to live, staying and/or interfering in any way with the plaintiff's quiet possession, use, occupation, development and proprietorship of the suit property being all that piece of land known as Mau Summit/Molo Block 1/118 Mutirithia;*

6. *Costs of this suit and interest thereon at court rates.*

2. The OS is supported by an affidavit sworn by the plaintiff. He deposed that he is the administrator of the estate of Esther Wangari Kariuki (deceased) and the parcel of land known as Mau Summit/Molo Block 1/118 Mutirithia (suit property) was also the suit property in Nakuru HCCC No. 425 of 1994 which was heard and determined through judgment delivered on 22nd February 2001 wherein the said suit was dismissed with costs to the defendants in the case. That being dissatisfied by the judgment, the plaintiff in the said case moved the Court of Appeal by way of an application for extension of time within which to file record of appeal in Civil Application Number 333 of 2005 and that the said application was dismissed with costs on 3rd March 2006.

3. He further deposed that in or about November 2016, the defendant herein invaded the suit property herein and has since been constructing houses therein. That the plaintiff herein is the registered owner of the suit property having purchased it and that he issued several demand notices upon the defendant but who has declined to give vacant possession. He therefore urged the court to grant the orders sought.

4. Although evidence of service was availed, the defendant neither filed a response to the OS nor participated in the hearing which was

conducted by way of affidavit evidence and written submissions. The plaintiff filed submissions wherein he argued that the deceased is the registered owner of the suit premises and that the defendant had trespassed thereon. He therefore urged the court to grant the orders sought.

5. I have considered the OS, the supporting affidavit and the submissions. From the material availed on record by the plaintiff, it is apparent that on 17th July 2019, the plaintiff was granted letters of administration ad litem in respect of the deceased's estate in Molo CM Probate and Administration Cause No. 69 of 2019. The grant was limited to the purpose of pursuing "a decree resulting to Nakuru High Court Civil Suit No. 425 of 1994 and Appeal No. 333 of 2005". There is no evidence that any full grant has been obtained either by the plaintiff or anyone else. As the plaintiff has himself stated, and as I have verified from the copy of judgment and ruling annexed in respect of Nakuru HCCC No. 425 of 1994 and Civil Application Number 333 of 2005, the outcome of both matters was that they were dismissed with costs. Thus, besides the costs, there is nothing else to pursue in both decrees.

6. The plaintiff has brought this suit as an administrator of the deceased's estate pursuant to the grant issued to him in Molo CM Probate and Administration Cause No. 69 of 2019. As already noted, the grant limits the plaintiff's powers to pursuing "a decree resulting to Nakuru High Court Civil Suit No. 425 of 1994 and Appeal No. 333 of 2005" and no more. I do not see how this suit can be said to be an effort to recover the costs awarded in Nakuru HCCC No. 425 of 1994 and Civil Application Number 333 of 2005.

7. As pleaded in the OS, the suit property herein is Mau Summit/Molo Block 1/118 Mutirithia which the plaintiff variously claims to belong to him or to the deceased. Among the documents exhibited by the plaintiff is a copy of a title deed in respect of a parcel of land known as Mau Summit/Molo Block 1/1118 (Mutirithia) which shows that the deceased was registered as proprietor of the said parcel on 11th July 1994. It will immediately be noticed that the title annexed by the plaintiff is in respect of parcel number **1118** which is different from the **118** pleaded by the plaintiff. As matter's stand, the plaintiff has not demonstrated ownership of Mau Summit/Molo Block 1/118 Mutirithia either by himself or the deceased.

8. In view of the limited grant which he holds which does not give him any power to file this suit and taking into account the lack of clarity in regard to the identity of the suit property herein, the plaintiff has failed to prove his case on a balance of probabilities. In the result, I dismiss the case with no order as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 27TH DAY OF APRIL 2022.

D. O. OHUNGO

JUDGE

Delivered through electronic mail in the presence of:

Court Assistant: E. Juma