



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ENVIRONMENT AND LAND CIVIL CASE NO. 206 OF 2011

KERESENSIA ASETA PLAINTIFFm

VERSUS

WILLIAM KIRIAGO 1ST DEFENDANT

JULIUS ARERI 2ND DEFENDANT

SABINA RABERA 3RD DEFENDANT

JUDGMENT

1. The plaintiff brought this suit against the defendants on 29th September 2011 seeking; a permanent injunction to restrain the defendants from trespassing into, interfering with or carrying out any activities on all that parcel of land known as **LR No. Wanjare/Bogitaa/1123** (hereinafter referred to as **“the suit property”**). In her plaint dated 26th September 2011, the plaintiff averred that she is the registered proprietor of the suit property on which she has her homestead and also carries on other activities. The plaintiff averred that on 21st September 2011, the defendants entered the suit property without the plaintiff’s permission and stopped the plaintiff’s workers from cutting a tree which was standing thereon.
2. The plaintiff averred further that, prior to that date, the defendants had entered the suit property without the plaintiff’s permission or consent in February, 2011 and cut down some of the trees that were growing on the suit property an act which the plaintiff reported to the police and had the defendants arrested and charged. The plaintiff averred further that when the defendants entered the suit property on 21st September 2011, in addition to stopping the plaintiff’s workers from cutting the tree that they had been instructed to cut by the plaintiff, the defendants also harvested bananas that were growing on the suit property which, they carried away with them. It is on account of the foregoing that the plaintiff brought this suit seeking an order of injunction to issue against the defendants.
3. The defendants were served with summons to enter appearance but neither entered appearance nor filed a statement of defence. When this suit came up for formal proof on 13th May 2014, the plaintiff gave evidence and called one witness. In her evidence, the plaintiff testified that she is the registered proprietor of the suit property and that the suit property was transferred to her by her husband one, Aseta Gwacho. The plaintiff stated that she is the second wife of Aseta Gwacho and that Aseta Gwacho settled her and put up a home for her on the suit property on which she has been staying over the years since 1974 with her children. She stated that she has planted trees, tea and coffee on the suit property. The plaintiff testified further that the 3rd defendant is her co-wife being the first wife of Aseta Gwacho and the 1st and 2nd defendants are the 3rd defendant’s sons with Aseta Gwacho.

4. The plaintiff stated that the 3rd defendant has been disturbing her on the suit property. She stated that in the month of September 2011, the defendants came to the suit property with a group of people and cut down several trees which they carried away. The defendants have also been coming to the suit property from time to time to harvest food crops such as bananas from the suit property. The plaintiff stated that the 3rd defendant has her home on a parcel of land known as Plot No. 1089 where she was settled together with her children by Aseta Gwacho, who is their husband. In addition to Plot No. 1089, the plaintiff stated that the 3rd defendant is also using Plot No. 1323 on which some of her children have put up their homes. Plot Nos. 1089 and 1323 aforesaid are registered in the name of Aseta Gwacho.
5. The plaintiff stated that the suit property is registered in her name and there is no reason therefore why the defendants should continue trespassing thereon. The plaintiff produced in evidence as exhibits; a copy of title deed for the suit property dated 11st January 2011 in her name, copies of title deeds for Plot Nos. 1089 and 1323 in the names of Aseta Ngwacho and, a certificate of official search dated 19th September 2013 in respect of the suit property which shows that the suit property was registered in the name of the plaintiff on 11th January, 2011 and that the 3rd defendant lodged a caution on the title on 19th October 2012 claiming beneficiary interest.
6. The plaintiff's witness was Aseta Gwacho (PW2) who is the husband to the plaintiff and the 3rd defendant and father to the 1st and 2nd defendants. He corroborated the evidence that was given by the plaintiff. PW2 told the court that he has settled his two (2) families on different parcels of land. His first wife, the 3rd defendant herein and her children were settled on and are occupying Plot Nos. 1089 and 1323 while the plaintiff, who is his 2nd wife was settled on and is occupying the suit property. PW2 told the court that he transferred the suit property to the plaintiff voluntarily and that the property now belongs to the plaintiff and her children.
7. After the close of the plaintiff's case, the plaintiff's advocate asked for leave to put in written closing submissions which were filed on 25th July 2014. I have considered the plaint, the evidence tendered by the plaintiff and her witness and the submissions by the plaintiff's advocate. I am satisfied that the plaintiff has proved her case against the defendants on a balance of probability. The plaintiff has proved that she is the registered proprietor of the suit property and that the defendants have no interest known in law in the property. Under section 24 of the Land Registration Act, 2012, the registration of the plaintiff as the proprietor of the suit property conferred upon the plaintiff the absolute ownership of the property together with all privileges and rights associated with such ownership.
8. Once the plaintiff established her ownership of the suit property, the burden shifted to the defendants to justify their entry into the said property. The defendants did not file a defence and as such tendered no evidence at the trial. The evidence by the plaintiff that the defendants have been entering the suit property without her consent or authority was therefore not controverted. It is my finding therefore that the defendants' occasional entry onto the suit property has been without any lawful cause and as such amounts to trespass. The plaintiff having proved that the defendants have been trespassing on the suit property, she is entitled to the injunction sought to restrain the defendants from committing further acts of trespass.
9. In conclusion, I hereby enter judgment for the plaintiff against the defendants jointly and severally as prayed in the plaint dated 26th September 2011. In view of the relationship between the parties, each party shall bear its own costs of the suit.

Delivered, signed and dated at KISII this 21st of November, 2014.

S. OKONG'O

JUDGE

In the presence of:-

.....for the plaintiff

..... for the defendants

.....Court Clerk

S. OKONG'O

JUDGE