



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 707 of 2012

MARGRET WANJIRU NJENGA .....PLAINTIFF

=VERSUS=

MRS MUMBI.....1<sup>ST</sup> DEFENDANT

SIMON NDAMBI.....2<sup>ND</sup> DEFENDANT

JUDGMENT.

By an Amended Complaint dated 7/11/2012, the Plaintiff herein Margaret Wanjiru Njenga has sued the Defendants Mrs. Mumbi and Simon Ndabi for orders that :-

- a. *An eviction order be issued for the removal of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly and severally, their agents, servants, belongings and / or otherwise.*
- b. *Costs of this suit.*
- c. *Any other relief that the Court may deem just to grant.*

The Plaintiff in her evidence in Chief, her complaint and witness Statement stated that she is the proprietor of parcel of Land **LR No. 209/8645** by virtue of her entitlement from her late husband. Plaintiff told the Court that after the demise of her husband, **Eliud Nyanjui Njenga** in 1986, she together with her co-wife **Jane Mabutui Njenga** filed a Succession cause. Letters of Administration were issued on 29/9/1992 and later the grant was confirmed 25/7/2005 and rectified on 8/2/2012. In the confirmed grant, the Plaintiff was **given Plot No. 209/8645 ( LR No. 31456) Nairobi .**

Plaintiff had also testified that the said parcel of land was registered in the names of her late husband, **Eliud Njenga** as per the Registration of Title Document( grant) issued on 1/3/1975. Further that, after the confirmation of grant, the said parcel of land was transmitted to her.

Plaintiff further testified that upon taking over the property, she established that the Defendants have trespassed on her said parcel of land. She served them with Notices dated 7/1/2009, 24/7/2012 15/8/2012 and 27/8/2012. However, the Defendants declined to move out. That the Plaintiff has continued to pay the Land Rates and the Defendants do not pay Land Rent although they are using the land. She attached copies of the said notices in her list of documents. The Plaintiff has now come to Court seeking for an **Eviction Order.**

The Defendants herein, were served with copies of the amended plaint as per the Affidavit of service filed by one **Joseph K Ndirangu** on 29/11/2012. The two Defendants did not Enter Appearance nor file defence. An **Interlocutory Judgement** was entered against them on 4/12/2012.

On 10/4/2013, the matter proceeded for formal proof. In the course of hearing the Plaintiff testified that after the distribution of the estate of her late husband **Eliud Nyanjui Njenga, Plot No LR 209/8645** was given to her.

The plot is still in the name of her late husband as per the copy of the search document. She further testified that some people have constructed temporary structure on the plot and she cannot develop it. That the said people are illegal occupants and they should be ordered out as they do not even pay land rates and land rent.

The Plaintiff has been forced to pay the said charges. That the Defendants have trespassed on her land as she has not allowed them to occupy the land. From the Plaintiff's evidence in Court and the exhibits or documents referred to, there is no doubt that the parcel in question belonged to the Plaintiff late husband **Eliud Nyanjui Njenga**.

After the Succession Cause No. 9116/1986 which was confirmed on 25/7/2005, **Plot No. 209/8645** was allocated to the Plaintiff. Plaintiff is therefore the lawful owner of the said Plot **No. 209/8645**.

The title of the land was issued under the Registration of Title Act Cap 218 which was repealed by the *Land Registration Act No. 3 of 2012. Section 26 (1) of the said Act reads as follows:-*

*“ The certificate of title issued by Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by the Court as **Prima-facie evidence** that the person named as the proprietor of the land is the absolute and indefeasible owner”.*

In the instant case, the registered owner is **Eliud Njenga**. The said parcel has been allocated to the Plaintiff herein through a succession cause as per the confirmation of grant dated 25/7/2005.

The Plaintiff therefore is the absolute owner of the property. The plaintiff testified that the Defendants have trespassed on her parcel of land and she issued them with notices but they have failed to vacate.

The two defendants did not enter appearance nor file defence. The Plaintiff evidence remains uncontroverted. I will borrow the authority attached by the plaintiff in her submissions, and find that the issue of trespass was dealt with in the case of

**Charles Ogejo Ochieng Vs. Geoffrey Okumu (1995)** where the Court of Appeal held that”

*“Trespass is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has the title to it”.*

The Plaintiff herein is the owner of the suit land by virtue of having acquired it through a Succession Cause. The Defendants have continued to trespass on it and thus severally injured the plaintiff's possessory rights.

Their action is therefore unlawful. The Court finds that the Plaintiff has been able to prove her case on a **balance of probability**.

Consequently, the Court allows the Plaintiff claim as stated in the plaint.

The Plaintiff is also entitled to costs.

Dated, signed and delivered this 17<sup>th</sup> day of May 2013

**L.N. GACHERU**

**JUDGE**

In the Presence of:-

.....For the Plaintiff/Respondent

.....For the 1<sup>st</sup> Defendant

.....For the 2<sup>nd</sup> Defendant

.....Court Clerk

**L.N. GACHERU**

**JUDGE**