



**Rawal & another v Wairimu & 6 others (Environment & Land Case 835 of 2013) [2022] KEELC 2310 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 2310 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 835 OF 2013**

**LN MBUGUA, J  
MAY 26, 2022**

**BETWEEN**

**CHANKIRA YOGENDRA RAWAL ..... 1<sup>ST</sup> PLAINTIFF**

**YOGENDRA RAMANLAL RAWAL ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JANE WAIRIMU ..... 1<sup>ST</sup> DEFENDANT**

**RICHARD KIRIOPA ..... 2<sup>ND</sup> DEFENDANT**

**ALLOISE ALLUSORI ..... 3<sup>RD</sup> DEFENDANT**

**DAVID IRUNGU ..... 4<sup>TH</sup> DEFENDANT**

**SAMUEL MUSILA ..... 5<sup>TH</sup> DEFENDANT**

**GEORGE THIONG'O ..... 6<sup>TH</sup> DEFENDANT**

**WANYAGU SUPER STORES ..... 7<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs are husband and wife. They filed this suit vide a plaint dated 10.7.2013 claiming that they are joint proprietors of the suit Parcel L.R.No. 209/12117 measuring 0.8049 hectares situated in Nairobi County, but Defendants invaded the property and put up structures. Efforts made to have the Defendants leave the suitland have been futile. The Plaintiffs therefore seek the following orders:
  - i. A declaration that the Defendants actions by themselves, their agents, servants and or all persons on the property claiming under them on the Plaintiffs' property known as LR. No. 209/12117 is unlawful and amounts to trespass.



- ii. An order requiring the Defendants, agents, servants or anybody claiming under them or whoever to remove and pull down with immediate effect any structures constructed on the property known as LR. No. 209/12117.
  - iii. An order requiring the Defendants, their agents, servants or anybody claiming under them or otherwise whoever to deliver vacant possession of the property known as LR. NO. 209/12117 to the Plaintiffs.
  - iv. A permanent injunction to restrain the Defendants, agents, servants or anybody claiming under them or whosoever from re-entering using, remaining on, wasting, erecting, any structures and or interfering in any manner howsoever with the property known as L.R. No.
  - v. Damages for trespass
  - vi. Cost of the suit.
2. The Defendants opposed the suit by filing a defence and a counter-claim dated 8.5.2014 averring that they are the lawful allottees of the suit land. They therefore pray for the following orders:
- i. A declaration that the Plaintiffs herein are the rightful owners of all that parcel of land known as L.R. 209/12117 measuring 0.8049 hectares.
  - ii. An order to issue against the Defendants or their agents from interfering, taking possession, selling or otherwise realizing the property know as L.R. No. 209/12117 measuring 0.8049 hectares.
  - iii. Costs of the counter-claim.
  - iv. Any other or further relief that the honourable court may deem fit to grant.
3. The matter had been set down for virtual hearing on 30.6.2021 when defence counsel sought for an adjournment. The defence side was given a last adjournment and the matter was scheduled for hearing on 3.3.2022. Come the date of 3.3.2022 and there was no appearance for the Defendants or their advocates, hence the hearing proceeded exparte.
4. PW1 Yogendra R. Rawal is the 2nd Plaintiff who testified on his own behalf and on behalf of his wife, the 1st Plaintiff. He also adopted his statement dated 10.7.2013 as his evidence and he produced the documents in his list dated 10.7.2013 as his exhibits.
5. The Plaintiffs' case is that they are the joint owners of the suit land whereby vide a grant No. 63720, they acquired a leasehold interest in the suit property for 99 years effective from 1.12.1993. That around year 2002, they employed 1st Defendant as a caretaker of the suit property and allowed her access to the Suitland, but terminated her services in year 2004. 1st Defendant was thus required to leave the premises.
6. However, the 1st Defendant did not leave. Instead, she invited the rest of Defendants who proceeded to put up structures. The 6th Defendant now operates a hardware known as Wanyangu Super Stores, while 7th Defendant constructed a church.
7. The Plaintiffs contend that the actions of the Defendants on the suit land are unlawful and amount to trespass.
8. Further, the Plaintiffs contend that the special conditions on the grant required the property to be used for light industries exclusively with ancillary and stores. Thus the buildings put up on the suit land have no approvals from the relevant authorities. That the Defendants even encroached on the public



road by the erection of illegal structures hence access to the property is difficult. On this account, the Plaintiffs pray that their claim be allowed.

### Determination

9. I have considered the pleadings the evidence and the submissions presented before this court. In particular, the court has considered that Plaintiffs exhibit 1 is a copy of the grant which shows that Plaintiffs are the lawful registered owners of the suit land.
10. The provisions of Section 24 and 25 of the *Land Registration Act* stipulates that:
  - “ 24. The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto....
  25. Rights of a proprietor –
    - 1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever...”
11. The provisions of article 40 of *the Constitution* stipulates that every person has the right either individually or in association with others to own and acquire property.
12. No evidence has been availed to challenge the title deed held by the Plaintiffs. It follows that Defendants’ continued occupation of the suit premises amounts to trespass.
13. In the case of *Philip Ayoye v Chrispus Nyayo* (2014)eKLR it was stated that:

“The Defendant has constructed on Plaintiff’s land. This in itself is damage and wastage of the Plaintiff’s land”
14. Likewise in the present suit, the Plaintiffs are entitled to damages which I assess at the sum of Kshs.1 000,000.
15. The Counterclaim of the defendants was not articulated before this court hence the same fails.
16. In the final analysis, I hereby grant the following orders:
  - 1) The Counter-claim of Defendants is hereby dismissed.
  - 2) The claim of the plaintiffs is allowed in the following terms;
    - I. It is hereby declared that the Defendants actions by themselves, their agents, servants and or all persons claiming under them on the Plaintiffs’ property known as LR. No. 209/12117 is unlawful and amounts to trespass.
    - II. An order is hereby issued requiring the Defendants, their agents, servants or anybody claiming under them to vacate the suit premises LR. No. 209/12117 and pull down their structures within 45 days from the date of delivery of this judgment.



III. An order of permanent injunction is hereby issued restraining the Defendants, their agents, servants or anybody claiming under them from interfering with the suit property known as LR. No. 209/12117.

IV. The defendants are jointly and severally condemned to pay to the plaintiffs Damages for trespass pegged at the sum of Ksh. 1 000 000.

3. The Defendants are condemned to pay costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Oyoo for the Plaintiff

Court Assistant: Eddel

