



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 289 OF 2013

MAURICE MUGAMBI NGOROIPLAINTIFF

VERSUS

PAUL GICHOVI NYAGADEFENDANT

JUDGMENT

The plaintiff filed this suit against the defendant on 15/2/2013 seeking the following remedies:

- a. A permanent injunction restraining the defendant either by himself or through his servants and/or all claiming under him and agents from trespassing, constructing on or attempting to develop on GATURI/NEMBURE/11666 or in any other manner dealing whatsoever with the land.
- b. An order of eviction from GATURI/NEMBURE/11666.
- c. General damages for trespass
- d. Costs of the suit and interest.

The suit was based on the facts that although the plaintiff is the registered proprietor of the parcel of land known as GATURI/NEMBURE/11666 (hereinafter referred to as the suit land), the defendant on or about the year 2012 and without any colour of right or justification whatsoever, illegally entered onto the said land and erected structures on it thus interfering with the plaintiff's right of peaceful use and quiet enjoyment of the said land hence this suit.

The defendant having been served personally on 7/3/2013 did not enter appearance or file defence and on 4/4/2013, interlocutory judgment was entered against him. This matter thereafter came up before me for formal proof on 14/5/2013.

The plaintiff gave evidence in support of the claim and told the Court that he purchased the suit property on 5/11/2011 from Perpetua Munyi and Pius Ndwiga and he produced the sale agreement (Exhibit 1) as well as the title deed to show that the property is registered in his names (Exhibit 2). He added that when he went to take possession of the property, he found that the defendant had trespassed on it and put up structures. He therefore instructed his lawyer to write a demand notice (Exhibit 3) and thereafter filed this suit.

Plaintiff's advocate filed submissions which I have considered together with the plaintiff's oral and documentary evidence.

The suit property is registered in the plaintiff's names and is under the **Registered Land Act** (now repealed) and under **Section 27 of the said Act**, such registration vests in the plaintiff ***“the absolute ownership of that land together with all rights and privileges belonging or appurtenant***

thereto". There are no inhibitions or other encumbrances noted thereon and the plaintiff's evidence as to ownership is not rebutted as the defendant did not file any defence. Therefore, on the basis of the plaintiff's un-controverted evidence, I have no hesitation in finding that he has, on a balance of probabilities established that indeed he is the owner of the dispute property upon which the defendant has illegally trespassed without any colour of right.

On the evidence before me, un-challenged as it is, I am satisfied that the plaintiff is entitled to the remedies of permanent injunction restraining the defendant by himself or through his agents or servants from trespassing and/or constructing on the suit property. The plaintiff is also entitled to an order evicting the defendant from the suit property.

With regard to damages for trespass, the Court will make a nominal award of Ksh. 10,000/=. The plaintiff is also entitled to costs of this suit plus interest at Court rates.

Orders accordingly.

B.N. OLAO

JUDGE

10/6/2013

10/6/2013

Before B.N. OLAO – JUDGE

CC – Muriithi

Ms Muthike for Kagiri for Plaintiff present

No appearance for Defendant

COURT: Judgment delivered this 10th day of June, 2013.

Right of appeal explained.

B.N. OLAO

JUDGE

10/6/2013