

IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL CASE NO.193 OF 2009

JEANETTE NINA NDUNGU.....PLAINTIFF

VERSUS

KENNETH NJUGUNA MBOGORI.....RESPONDENT

JUDGMENT

The plaintiff brought this suit against the defendant praying that the latter be restrained by a permanent injunction from selling, transferring, building on or in anyway trespassing on parcel of land known as L.R. 11098/62 (the suit property). She is further seeking a declaration that the suit property belongs to her, an order directing the defendant to remove the fence he has erected upon the suit property, costs and interest. The matter proceeded *ex parte* after the defendant failed to enter appearance, file a defence or participate in the haring despite service.

The plaintiff testified that the suit property was initially registered in the name of her husband, Joel Ndungu Jeremiah, who, in 1990 transferred it to her. In February, 2009, the plaintiff learnt that the defendant was carrying out construction of a wall around the suit property. Upon inquiring from the defendant, his interest in the suit property he became rude claiming the ownership of the suit property. He took the plaintiff to his home and showed her a document of title in his name in respect of parcel of land No.11098/57 which is depicted in the area map as distinct from the suit property. This notwithstanding, the defendant claimed his was the genuine title while the plaintiff's was a forgery. He continued to put-up the wall, completed it, fixed the gate and locked it. Since February, 2009, the plaintiff has not had access to the suit property hence this suit.

The plaintiff called **P.W.2, Stephen Kamau** who confirmed that indeed the defendant was building a wall around the suit property. He accompanied the plaintiff to the defendant's home and saw his title deed for parcel of land No.11098/57.

I have considered the evidence presented by the plaintiff. In particular, it is common ground that the suit property is registered in her name as reflected in the grant and the physical planner's map. I am also persuaded that the defendant's parcel, although in the same area as the suit property is distinct and separate. In the absence of any evidence to the contrary, I find the plaintiff's claim against the defendant proved on a balance of probability and is accordingly allowed. It is declared, therefore, that the plaintiff is the lawful owner of the suit property hence is entitled to its unfettered use. The defendant having failed to prove his interest in the suit property has trespassed and built a wall around the suit property and is probably planning to develop it. He is restrained by an order of permanent injunction from interfering in anyway with the suit property. He is further ordered to remove the wall forthwith failing which the plaintiff is authorized at the defendant's expense to remove it.

I award costs of this suit to the plaintiff.

Dated, Delivered and Signed at Nakuru this 15th day of February, 2011.

W OUKO
JUDGE