



**Washika (Suing through her legal attorney Grishon Kwoba Olingo) v Wekesa & another  
(Environment & Land Case 482 of 2017) [2022] KEELC 3372 (KLR) (9 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3372 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND CASE 482 OF 2017**

**YM ANGIMA, J**

**JUNE 9, 2022**

**BETWEEN**

**MARY WASHIKA ..... PLAINTIFF  
SUING THROUGH HER LEGAL ATTORNEY GRISHON KWOPA OLINGO**

**AND**

**MARY KEMUNTO WEKESA ALSO KNOWN AS MARY KEMUNTO  
MOSIORI ..... 1<sup>ST</sup> DEFENDANT  
JOHN MOMANYI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**A. Plaintiff's Claim**

1. By a plaint dated 3.08.2017 and filed on 29.08.2017, the Plaintiff sought the following reliefs against the Defendants:
  - a. A declaration that the said Mary Washika is the lawful proprietor of the parcel of land known as Nyandarua/Kaimbaga/250.
  - b. An order of eviction against the Defendants by themselves, their representatives, children or relatives and persons claiming entitlement under them from the parcel of land known as Nyandarua/Kaimbaga/250 measuring approximately 16.4 ha.
  - c. A perpetual injunction to issue to restrain the Defendants by themselves, their agents, servants or any persons claiming under them from trespassing, entering, disposing, charging, selling and/or dealing in whatever manner with the Plaintiff's parcel of land Nyandarua/Kaimbaga/250.
  - d. General damages for trespass.



- e. Costs and interest of the suit.
  - f. Such other and further relief that the Honorable court may deem fit and just to grant.
2. The basis of the Plaintiff's claim was that she was the registered proprietor of the suit property and that the Defendants had unlawfully occupied or settled thereon thereby denying her peaceful use, possession and occupation thereof. The Plaintiff pleaded that the Defendants were initially in occupation on humanitarian grounds but had turned into trespassers by continuing to occupy the suit property without her permission. The Plaintiff enumerated 3 particulars of trespass in paragraph 8 of the plaint against the Defendants.

## **B. Defendants' Response**

3. The record shows that the Defendants filed a notice of appointment of advocates through the firm of Muchangi Patrick & Co. Advocates on 8.03.2018 but did not file a memorandum of appearance or statement of defence. They, however, filed a replying affidavit sworn jointly on 23.07.2017 in response to the Plaintiff's application dated 3.8.2017 for an interim injunction.
4. The Defendants denied being on the suit property on humanitarian grounds or as trespassers. They instead claimed to have acquired the suit property on account of adverse possession under the *Limitation of Actions Act* (Cap.22) by having been in exclusive possession thereof for 20 years. They denied having met the Plaintiff over the suit property and stated that they had extensively developed the suit property by constructing a permanent house, cultivating the same and connecting electricity thereto. They also claimed to have buried their deceased relatives on the suit property.

## **C. Summary of evidence at the trial**

5. At the trial hereof, only the Plaintiff's attorney Grishon Olingo testified as the sole witness for the Plaintiff. Neither the Defendants nor their advocate attended court despite service. The Plaintiff's witness (PW1) adopted his witness statement dated 03.08.2017 as his evidence in-chief. He also produced the documents listed in the list of documents dated 03.08.2017 as exhibits P1 – P5. His evidence was that the suit property belonged to his sister Mary Washika who had acquired the same from Settlement Fund Trustee (SFT) in 1983 or thereabouts and that she obtained a title deed for it on 24.02.1993 after fulfilling all the laid down conditions. A copy of the title was produced as exhibit P4.
6. It was the evidence of PW1 that the Plaintiff had allowed the Defendants to occupy the suit property purely on humanitarian grounds and on the understanding that they shall vacate whenever the Plaintiff required the same for her own use. It was the Plaintiff's case that the Defendants had, however, refused to vacate the suit property upon being called upon to do so without lawful cause or excuse hence the suit.

## **D. The issues for determination**

7. The court has considered the pleadings, evidence and documents in this matter. The court is of the opinion that the following key issues arise for determination herein:
- a. Whether the Plaintiff has proved her case on a balance of probabilities.
  - b. Whether the Plaintiff is entitled to the reliefs sought in the plaint.

## **E. Analysis and Determination**

- a. Whether the Plaintiff has proved her case on a balance of probabilities.



8. The court has considered the pleadings, evidence and submissions on record on this issue. There is no doubt from the material on record that the Plaintiff was allocated the suit property by SFT in 1983 or thereabouts. The title deed and certificate of official search also confirm that the Plaintiff is the current registered proprietor of the suit property. The Defendant did not attend court to challenge the Plaintiff's documentary evidence on ownership of the suit property. The court is thus satisfied that the Plaintiff has proved her ownership of the suit property and that she is entitled to enjoy all the rights of a registered proprietor under Section 24 of the [Land Registration Act](#), 2012 including the right to immediate possession thereof. Accordingly, the court is satisfied that the Plaintiff has proved her case against the Defendants to the required standard.
- b. Whether the Plaintiff is entitled to the reliefs sought in the plaint.
9. The court has considered the material and submissions on record on this issue. It is evident from the plaint that the Plaintiff is seeking six (6) reliefs against the Defendants on account of trespass. The court has already found that the Plaintiff is the registered proprietor of the suit property. It would, therefore, follow that she is entitled to a declaration to the effect that she is the lawful owner thereof. The court is further of the opinion that the Plaintiff is entitled to an eviction order against the Defendants in order to vindicate her property rights. However, the court is not inclined to grant a perpetual injunction against the Defendants because they are already in possession hence the only effective remedy to vindicate the Plaintiff's proprietary rights is an eviction order.
10. The Plaintiff has also sought general damages for trespass. Although the Plaintiff did not seek a specific quantum of damages, the court agrees with her submissions that trespass to land is actionable per se hence there is no necessity of proving specific loss or damage before damages become awardable. See [Joseph Kipchirchir Koech -vs- Philip Cheruiyot Sang](#) [2018] eKLR. Accordingly, the court is inclined to award the Plaintiff a modest sum of Kshs. 100,000/= as general damages for trespass.

## **F. Conclusion and Disposal**

11. The upshot of the foregoing is that the court is satisfied that the Plaintiff has proved her case against the Defendants to the required standard. The court is also satisfied that the Plaintiff is entitled to the remedies indicated in the preceding paragraphs. Accordingly, the court makes the following orders for disposal of the suit:
- a. A declaration be and is hereby made that the Plaintiff is the lawful proprietor of the suit property, that is, Title No. Nyandarua/Kaimbaga/250.
- b. An order of eviction be and is hereby granted for the eviction of the Defendants by themselves, their representatives, agents, servants and any persons claiming under them from Title No. Nyandarua/Kaimbaga/250.
- c. The Plaintiff is hereby awarded general damages for trespass in the sum of Kshs. 100,000/=.
- d. There shall be no order as to costs since the suit was not defended.

It is so decided.

**JUDGMENT DATED AND SIGNED AT NYAHURURU THIS 9<sup>TH</sup> DAY OF JUNE, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

In the presence of:

Mr. Mwangi for the Plaintiff

N/A for the Defendants



C/A - Carol

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**Y. M. ANGIMA**

**JUDGE**

