



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 2 OF 2000

PAUL NDIRITU GITURO.....PLAINTIFF

VERSUS

MUNYUKO GICHAGA..... DEFENDANT

JUDGMENT

Paul Nderitu Gituro, the Plaintiff herein, filed the Complaint dated 21st December 1999, in which he sought for judgment against Munyuko Gachaga, the Defendant herein, in the following terms:

- (a) General damages for trespass.**
- (b) Removal and/or eviction of the defendant or his developments on the plaintiff's parcel of land as MAHIGA/MUNYANGE/839.**
- (c) Kshs.7,000/- being the labour costs for the fixing of the destroyed fence.**
- (d) Cost of this suit.**
- (e) Interest on (a) (c) and (d) at court rate.**
- (f) Any further relief that the court may deem fit to grant.**

The Defendant filed a defence, denying the Plaintiff's claim.

When the suit came up for hearing, the Plaintiff testified alone in support of his case. Paul Nderitu Gituro (P.W. 1) told this court that the parcel of land known as **L.R. NO. MAHIGA/MUNYANGE/266** was initially registered in the name of one Gichaga Kabiru in 1958. He produced a copy of the green card to establish that allegation. P.W. 1 produced a copy of the certificate of the confirmation of grant in respect of the estate of Gichaga Kabiru, deceased, which indicates that the aforesaid parcel of land was to be shared between six beneficiaries of the Estate. P.W. 1 said he and the Defendant were beneficiaries of the Estate hence they were entitled to inherit a portion of the land. P.W. 1 produced as exhibits in evidence the mutation forms showing that **L.R. NO. MAHIGA/MUNYANGE/266** was subdivided into six subdivisions namely:

- (i) L.R. MAHIGA/MUNYANGE/836.**
- (ii) L.R. MAHIGA/MUNYANGE/837.**
- (iii) L.R. MAHIGA/MUNYANGE/838.**
- (iv) L.R. MAHIGA/MUNYANGE/839.**
- (v) L.R. MAHIGA/MUNYANGE/840.**
- (vi) L.R. MAHIGA/MUNYANGE/841.**

The Plaintiff stated that the parcel known as **L.R. MAHIGA/MUNYANGE/839** was transmitted to him while **L.R. NO. MAHIGA/MUNYANGE/840** was transmitted to Munyuko Gichaga, the Defendant

herein. P.W. 1 produced copies of the respective titles as exhibits in evidence. The Plaintiff averred that upon obtaining title to his portion he gave notice to the Defendant to vacate the land. He also stated that he told him to demolish the structures the Defendant had put up on the suit land. P.W. 1 also said he told the Defendant to uproot the tea bushes and the blue gum trees he had planted on the land in dispute. The Plaintiff said he was prompted to file this suit when the Defendant defied his demand. The Plaintiff produced a survey report carried out on the suit land as an exhibit in evidence. P.W. 1 financed alone the survey work yet the Defendant had agreed to shoulder half of those expenses. The Plaintiff further alleged that the Defendant destroyed his fence and that he is seeking for an order of compensation for its value.

The Defendant testified and summoned the evidence of one witness to support his defence. **Munyuko Gichaga** (D.W. 1) claimed that he cultivated tea in **L.R. NO. MAHIGA/MUNYANGE/266** in 1984. He claimed there was a consent order which was recorded on how the aforesaid land should be shared among the six (6) beneficiaries, him being included. He said he did not sign the mutation forms nor did he attend the Land board Meetings. He admitted having removed the Plaintiff's fence and beacons. He stated that there was a boundary dispute between **L.R. NO. MAHIGA/MUNYANGE/ 840**. He said he will not move out of the land in dispute unless a court order is issued. The Defendant admitted that he is aware that the land has been subdivided and titles issued. **Charles Nderitu** (D.W. 2), stated he and P.W. 1 were the co-administrators of the Estate of Gichaga Kabiru, deceased. D.W. 2 claimed he and D.W.1 did not sign the mutation forms and neither did they attend the Land Control Board to apply for consent. D.W. 1 and D.W. 2 admitted the mutations were signed by the executive officer of this court why they failed to append their signatures. D.W. 2 stated that he actually removed beacons.

At the close of the evidence, learned counsels appearing in the matter were invited to file and exchange written submissions. I have considered the evidence and the rival written submissions. There is no doubt that the Plaintiff has sought in his plaint against the Defendant general damages for trespass, removal of the Defendant's properties from **L.R. NO. MAHIGA/MUNYANGE/839**, labour and costs for refixing and restoring the damaged boundary fence plus costs of this suit. From the evidence tendered, it has emerged that Paul Nderitu Gituro (Plaintiff) and Charles Nderitu Gichaga (D.W. 2) had jointly applied for a grant of Letters of Administration respect of the estate of Gichaga Kabiru, deceased, vide **Nyeri S.R.M.C. SUCC. CAUSE NO. 237 OF 1989**. D.W. 2 raised an objection against issuance of grant. The objection was dismissed and the grant was issued in the joint names of the Plaintiff and D.W. 2. The grant was confirmed on 9th April 1996. The Court further proceeded to issue an order authorizing the executive Officer to sign all the papers necessary for transmission. It is on record that Munyuko Gichaga, the Defendant herein, applied for the grant to be revoked vide **Nyeri H.C. MISC. APPLICATION NO. 123 OF 1996**. On 12th March 1998 a consent order recorded to have **L.R. NO. MAHIGA/MUNYANGE/266** subdivided into six (6) portions i.e. **L.R. NO. MAHIGA/MUNYANGE/836-841**. I have already stated that the Plaintiff was given **L.R. NO. MAHIGA/MUNYANGE/839** whereas the Defendant was given **L.R. NO. MAHIGA/MUNYANGE/840**. It has also emerged from the evidence presented that the Plaintiff shouldered all the expenses for the survey of the land yet the Defendant and the other beneficiaries had pledged to contribute. There is indisputed evidence showing that the Defendant's trees, tea bushes and a structure are inside **L.R. NO. MAHIGA/MUNYANGE/839**, the Plaintiff's land. The Defendant has refused and continues to refuse to remove those crops and structures unless directed by a court order. The report prepared by the surveyor was adopted as the report of this court on 13th March 2009. That report clearly shows that the Defendant's tea bushes, house and blue gum trees are on the Plaintiff's land. The Defendant admitted having removed the beacons and the fence fixed by the Plaintiff. I am convinced that the Plaintiff spent a sum of Ksh.7000/= as labour costs for refixing the destroyed fence. The Defendant should pay for his deeds. I find him liable for trespass. The Defendant to pay Ksh.10,000 damages for trespass.

In the end I find that the Plaintiff has established his case to the required standards. I enter judgment in favour of the Plaintiff and against the Defendant as prayed in the plaint. For the avoidance of doubt, judgment entered is in the following terms:

- (i) **Ksh.10,000 being damages for trespass.**

- (ii) **An order directing the Defendant to be given vacant possession of L.R. NO. MAHIGA/MUNYANGE/839 within 30 days in default the Plaintiff to forcefully evict the Defendant at the Defendant's cost.**
- (iii) **The Defendant is ordered to remove the crops, trees and all the structures standing on the aforesaid land within 30 days in default the Plaintiff will be at liberty to remove the same at the Defendant's expense.**
- (iv) **The Defendant to pay the Plaintiff Ksh.7,000/= being labour costs incurred by the Plaintiff onrefixing the fence.**
- (v) **Costs of the suit given to the Plaintiff.**

Dated and delivered at Nyeri this 23rd day of September 2011.

J. K. SERGON
JUDGE

In open court in the presence of Wachira for the Plaintiff and Chweya holding brief Mungai for the Defendant.