



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 656 of 2001

DANIEL NGANGA MUGO 1ST PLAINTIFF

BETH NJAMBI NJOROGE 2ND PLAINTIFF

VERSUS

WILLY WANYOIKE MACHARIA 1ST DEFENDANT

MWANGI WANYOIKE MACHARIA 2ND DEFENDANT

DANIEL MWANGI MUGO 3RD DEFENDANT

DANIEL MUTHOGA MACHARIA 4TH DEFENDANT

SIMON MUGO MACHARIA 5TH DEFENDANT

ONESMUS NGANGA MUGO 6TH DEFENDANT

MACHARIA MUGO 7TH DEFENDANT

WANYOIKE MACHARIA 8TH DEFENDANT

JUDGMENT

The two plaintiffs herein brought this suit against all the defendants jointly and severally for orders that the said defendants be evicted from a parcel of land known as LR. No.Loc.3/Mukuria/150 previously owned by the late Gathokore Mugo who is the father of the two plaintiffs.

The 2nd plaintiff is the step sister of the 1st plaintiff. The defendants filed a defence claiming interest in the said parcel of land and also that they were beneficiaries of the late Gathokore Mugo. At the instance of the plaintiffs, the defence filed by all the defendants was struck out by Ojwang J on 21st July, 2005 and the case ordered to proceed by way of formal proof.

In these proceedings, the court was informed that the 2nd plaintiff was no longer interested in the suit property and therefore, the 1st plaintiff was allowed to prosecute the suit.

As at the time of the hearing, the 1st plaintiff was already the registered proprietor for the said parcel of land and he produced a title deed in respect thereof as Exhibit No.1. There had been succession proceedings in P&A No.588 of 1985 where the 2nd plaintiff Beth Njambi was appointed the administratrix of the estate of Gathokore Mugo.

In the certificate of Confirmation of Grant produced in these proceedings as Exhibit 2, both plaintiffs were to hold the parcel of land herein as joint tenants in common. I believe that, it is upon the said confirmation that the 2nd plaintiff transferred this parcel of land to the 1st plaintiff in whose name the title deed was issued on 9th November, 2004.

The 1st plaintiff said in these proceedings the he knew the defendants as his uncles and some of their children who have occupied

part of the land without his permission. They were not named in the Certificate of Confirmation produced in these proceedings as Exhibit No.2 and, there was an application challenging the said grant which was however dismissed. An application for review of the dismissal order was also dismissed.

On the foregoing evidence, he prayed that the defendants be evicted from his property and that he be paid general damages for loss of use of his property. As observed earlier, the defence of the defendants was struck out and, therefore the evidence of the plaintiff in these proceedings remains uncontroverted.

The hearing notice was served upon the advocates on record for the defendants but they did not appear.

I watched the 1st plaintiff give evidence in these proceedings and observed his demeanour. I am persuaded that all he told the court was the truth and has established his pleadings as against the defendants.

However, the issue of damages was not properly canvassed and the 1st plaintiff failed short of establishing general damages claimed in the plaint.

In the end, I hereby enter judgment in favour of the plaintiffs against the defendants jointly and severally as prayed in the plaint in respect of the eviction order. The prayer for general damages has not been proved and cannot be granted. The defendants shall be evicted from the suit property upon service of one (1) month's notice from the date of the extraction and service of the order. The plaintiffs shall also have the costs of this suit.

Orders accordingly.

Dated, signed and delivered at Nairobi this 12th day of March, 2010.

A. MBOGHOLI MSAGHA
JUDGE