



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 7 of 2004

BORNES C. KOSKEI.....PLAINTIFF

VERSUS

GEOFFREY K. KORIR.....DEFENDANT

JUDGMENT

The Plaintiff in this case, Bornes Chepkurui Koskei is the registered proprietor of a parcel of land known as NAKURU/OLENGURUONE/KAPGATICH/610. She has sued the Defendant Geoffrey K. Korir praying that he be declared a trespasser over her said parcel of land and ordered to deliver up vacant possession of the same to the plaintiff, failing which an eviction order to issue. She also prays for the costs of the suit plus any other or further relief as the court may deem fit and just to award.

In her plaint dated 11th June, 2003 the Plaintiff states that she permitted the Defendant to occupy part of the suit land as a licensee in the year 2001. In 2003 the Defendant assaulted the Plaintiff causing her to revoke the licence and ask him to leave. He refused to do so, hence the filing of this suit.

The Defendant filed a defence dated 27th February, 2004 denying all the Plaintiff's averments in her plaint and stating that the Plaintiff has no cause of action against him. On 28th June, 2007, the Plaintiff obtained an order restraining the Defendant from harassing, threatening and/or interfering with the Plaintiff's quiet and peaceful enjoyment of the suit land.

The hearing of the suit proceeded ex-parte, the Defendant's advocates on record M/s. Bogonko & Company having failed to attend court despite their having been served with the hearing notice. The court noted that the hearing notice was received under protest on the basis that the said firm was not on record, yet they had not made the necessary application to cease acting despite having had the matter adjourned on 23/4/2007 to enable them do so.

Counsel for the Plaintiff filed what they called "**Agreed Issues**" notwithstanding that the same had not been served on the defence for comment and/or approval. The said issues can only be and are hereby deemed to be the "**Plaintiff's Statement of Issues.**" Going by the pleadings issues No.3 and 4, 5 and 6 are not appropriate. I find that the issues arising from the pleadings to be as follows:

1) Whether the Plaintiff's suit discloses a cause of action against the Defendant.

2) Whether or not the Plaintiff is the rightful owner of the parcel of land known as

Nakuru/Olenguruone/Kiptagich/610.

3) Whether the defendant is a trespasser on the said parcel of land and whether he should be ordered to deliver vacant possession thereof to the Plaintiff.

4) Should an eviction order issue against the defendant?

5) Whether the Plaintiff is entitled to the costs of the suit.

The Plaintiff testified at the hearing and called one witness. In her testimony she stated that the Defendant entered into the suit land sometime between 2001 and 2002 and erected a house thereon. He then started tilling the land and grazing thereon. Later he felled down the Plaintiff's trees and also destroyed her house. At the time of the hearing, the Defendant was said to have been leasing out part of the Plaintiff's land to other people and has resorted to metting out physical violence against the Plaintiff whenever she made demands for him to vacate. The Plaintiff testified also that she has complained to the police and the chief but they had been unable to assist her in the absence of a court order. Despite her continued protests, the Plaintiff says, the Defendant has even gone ahead and buried two of his kin on the land.

To support her claim, the Plaintiff tendered in evidence copies of her Title Deed dated 6th December, 1995 and a search certificate dated 26th May, 2007. The two were admitted after due verification against the original documents and marked Ex.P.1 and 2.

The Plaintiff's only witness Kipsang Arap Chemuren testified that he was the brother of the Plaintiff and had personal knowledge only of the fact that the land in dispute belonged to the Plaintiff and the Defendant entered thereon sometime in the year 2002 and has lived there with his family since, having built a house and undertaken farming activities on the land, activities which he continues to carry out.

After the close of the Plaintiff's case, her counsel asked to be allowed to file written submissions. The same were filed and served upon the Defence Counsel. No submissions were filed for the Defendant.

Counsel for the Plaintiff submitted two authorities in support of the Plaintiff's claim as follows:

1. SHARIFF ABDI HASSAN VS. NADHIF JAMA ADAN - H.C.C.A.NO.121 OF 2005

2. THADEO NDUNGU NJOROGE VS. THIKA COUNTY COUNCIL H.C.C.C.NO. 2453 OF 1998.

Save for the fact that the oral evidence of the Plaintiff in the **Thaddeo** case was not challenged, I see no other similarity between the suit before me and the above cited authorities where the Plaintiffs in both of them had sought orders for injunction.

The above notwithstanding however, I find that the Plaintiff having proved by documentary evidence that she is the lawful owner of the parcel of land known as NAKURU/OLENGURUONE/KIPTAGICHI/610, the Defendant having neither challenged her claim in any way nor attending court to explain what interest, if any, he has over the same, I hereby allow the suit and enter judgment for the Plaintiff as prayed in the Plaint with costs of the suit and interest thereon at court rates.

The Defendant is hereby ordered to deliver possession of the suit parcel of land to the Plaintiff within the next 45 days in default of which an order for eviction shall issue forthwith.

DATED, SIGNED and DELIVERED at NAKURU this 12th day of March, 2009.

M. G. MUGO

JUDGE