



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL SUIT 1964 OF 1998
LABAN KAROGOI MIGWI & OTHERS.....PLAINTIFF
VERSUS
AGNES NTHENYA MUTUA.....DEFENDANT
JUDGMENT

I. Background

1. The plaintiff 1, 2 and 3 are the registered owners of land parcel LR 16025. The defendant is the registered owner of land parcel LR 16024.
2. The two parties are in dispute because the plaintiffs claim the defendants had encroached into their parcel of land.
3. They filed suit whereby they claimed the defendants remove her part of the building where she had encroached.
4. The defendant denied this.

II Trial Procedure

5. On the 5.11.02 Waki J began the hearing of this matter. He left it part heard. The case was not heard until 10 June 2008 before this court Environmental and Land Law Division.
6. In evidence the plaintiff stated the defendant had encroached on to the land. Then they called the surveyor who stated likewise.
7. The defendant described how she came into the land and was shown beacons. She then called her surveyor who claim the beacon had been destroyed.
8. This court ordered that a Government surveyor be on the land to determine the actual boundary.
9. The report filed on 25 July 2007 together with the map indicated that:-

‘LR NO. 16025 encroaches on LR NO. 16024 by 1.37m to the north and 0.56m to the south of the whole length of LRNO. 16024 (shaded red) and area of encroachment in 18.91 square meters.

LR 16025 also encroaches on 6m road as shown shaded double”

10. This report does not correspond to the map that has been filed. The parties brought it to my attention that the survey map is correct. It shows that the defendant portion of land LR 16024 encroaches onto LR16025.

11. I believe the report has a typographical error.

12. The parties in principle agree with the map which I append my signature and “mark A”.

13. I find that there is a subsequent **beacon placed covering an area of 18.91m² approximately that has been encroached into LR 16025. This is LR 16024 defendant has encroached suits LR 16025(plaintiff) parcel of land by 1.37m parcel of land by.1.37 m to the north to the north and 0.56m to the south for the whole length of LR16025 (shaded read) and are of encroachment is 18.91 square m² (encroachment is of 16024 by 6m on the road reserve).**

I order that the survey report be amended accordingly.

14. This map further shows clearly that the encroachment onto LR16025 is shaded red.

15. I hereby enter judgement for the plaintiff against the defendant and declare that the plaintiff is the lawful registered owner of LR 16025 that has been encroached onto by the defendant on LR 16024.

16. The defendant is hereby ordered to remove the part of the building projecting onto the plaintiff plot within 60 days at her own cost.

17. That no submission were made on the issue of damages. The defendant will suffer loss on the construction building she has put up. There will be no order as to damages herein.

18. I award the costs of this suit to the plaintiff.

19. I order the surveyor report be given a copy of this judgment and file an amended report accordingly and serve the parties.

DATED THIS 29TH DAY OF JULY 2008 AT NAIROBI

M. A. ANG’WA

JUDGE.

B. Kamar instructed by V.V. Mule & Co. Advocates for the plaintiff – present

P.S.K. Kimiti instructed by Kimiti & Co. Advocates for the defendant - respondent

Court as before

“By consent of the parties the defendant

Agnes Nthenya Mutua shall have the liberty to purchase the area of encroachment measuring 18.91 square meter from the plaintiffs:-

i) Laban Karogoi Migwi

ii) Mugo Gitari

iii) Daniel Chomba Gichanga

By further consent.

2. That parties to meet in the chambers of

P.S.K. Kimiti on the 7 August 2008 at

11.00 am. together with parties.

3. Parties be at general liberty to apply.”

Signed B. Kamu for V.V. Mulee & Co. Advocates for the plaintiffs.

Signed Kimiti for P.S.K. Kmiti & Co. Advocates for the defendants.

Application granted and orders accordingly.

M.A. Ang’awa

Judge

29.7.08

Position of file

1. “Judgment delivered in favour of plaintiff.

Defendant to be evicted and demolish encroachment.

2. Survey’s report has typographical error to be amended by the surveyor. See order in judgment for Deputy Registrar to execute. (Para 19 of Judgment). Page 55.

2. That parties have now entered consent for defendant to purchase the encroached area.

3. Liberty to apply (page 56).

M.A. ANG’AWA

JUDGE