



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

Civil Case 468 of 2003

ELIZABETH WANJIKU WAINAINA 1ST PLAINTIFF

RUTH GACHECHE 2ND PLAINTIFF

NAOMI NJERI 3RD PLAINTIFF

(As trustees for Wamora Women Group)

VERSUS

WALLACE KURIA 1ST DEFENDANT

PAUL KURIA NJOROGE 2ND DEFENDANT

HANNAH WAMBUI NJOROGE 3RD DEFENDANT

JUDGMENT

I: Background

1. The three plaintiffs are the registered owner of Land parcel LR Karai/Karai/352 situated within the Kiambu District Land registry with effect from 18 September 1996. The approximate area of land being 2.1ha.

2. Oral evidence supported by previous cases finalized and which the defendants admit the existence of the said previous case, states that the three plaintiffs were and still are the office bearers of the Wamora Womens Farming Group. PW1, the chair Elizabeth Wanjiku Wainaina had utilized the said land for farming by the Womens Group. The land originally belonged to the Council of the area. They had cultivated the land since 1969 for the sole purpose of growing vegetables for commercial sale. In 1996 they were allocated the land by the County Council municipality and issued with a title deed (really a land certificate under the Registered Land Act Cap 300.).

3. Without colour of right, the three defendants trespassed onto the said land. They refused to move out when asked. From the proceedings it appears that the plaintiff had given them permission to be on the land but they began to build structures and refused to leave. They even buried one of their fathers on the land.

4. On the day the trial was held the defendant did not appear to give evidence. Their defence was a denial of the allegations that they admitted there were previous case between the parties finalized save, according to their advocate, the existence of a review to one of the cases.

5. The plaintiffs sued the defendant in court. The case delayed and they went to the tribunal. There they filed Land Dispute Tribunal case 18/90. The claim was for trespass and orders of eviction. The tribunal upheld the plaintiff case and ordered defendant 1, 2 and 3 be evicted. The 3 defendants filed an appeal to the Provincial Appeals Tribunal Kiambu 43/99. The said appeals tribunal up held the decision of the Lands Disputes Tribunal. The defendants appealed to the High Court CA 545/99. Amin J (as he then was) dismissed the appeal and upheld the finding of the tribunals.

6. The defendants refused to vacate the property. According to their advocate there is a review pending to the High Court Appeal case. The plaintiff filed Hccc468/03 seeking the eviction of defendant 1, 2 and 3 from the suit property.

7. The defendants admitted the existence of the suit in other courts (now finalized) save for the application for review on Amin J's judgment – not heard.

II: Agreed Issues

8. From the evidence before court and relying on Section 34 of the Evidence Act in using the proceeding of the other courts to this case I would determine the agreed issues as follows:-

9. The plaintiff are registered owners of the suit property known as Karai/Karai/253 measuring 2.1 ha and registered in map sheet No,5,9 with effect 18 September 1996. The defendants took upon themselves to build structures jointly and severally on the suit premises without the express authority of the plaintiffs. The defendants caused the said structure to be build. The exact date is not known but the defendants evidence in the lower court was that their parents constructed the structures.

10. The defendant claim they occupy open space in Karai location allocated to them by the council. The plaintiffs claim that the defendants are neighbours and they have encroached on to the land.

11. There was a land dispute tribunal case in favour of the plaintiffs that decision being upheld from the Provincial Appeals Committee to the High Court of Kenya at Nairobi.

12. There has been no appeal to the Court of Appeal. The only way the defendant can access the court of appeal, is to file a review to the appeal and then appeal to the Court of Appeal. The advocate for the defendants state that this application is still pending in that file.

III: Finding

13. From the evidence before court I find that the plaintiffs have established their case for eviction of the defendants from the suit land. I accordingly enter judgment in favour of the plaintiffs against the defendant. That the defendants be evicted by a court Bailiff of the court.

14. On the prayers by plaintiffs for damages, this was never pleaded nor particularized. It did not form part of the prayers pleaded. It is therefore rejected.

15. As to the technicalities raised by the advocate for defendant during the trial, the advocate did admit that none of the technicalities raised was pleaded in the defence; as such none was considered and or relied on by this court a party is bound by their pleadings.

16. Litigation must come to end. The orders herein as prayed be that the three defendants their, agents and or servants be

and are hereby evicted by a **Court Bailiff** of the High Court of Kenya. The defendants would pay costs

to the plaintiff for this suit.

DATED THIS 8TH DAY OF JULY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

R.O.S. Agana instructed by Ahmed Nasir & Co. Advocates for the plaintiff – present

A.W. Kinuthia instructed by A.W. Kinuthia & Co. Advocates for the defendant - present