



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 841 OF 2017

AGNES MUTHONI NGUGI (Suing as the Administrator of the

Estate of SAMUEL NGUGI KAMAU (Deceased).....PLAINTIFF

VERSUS

PETER MWANGI1ST DEFENDANT

MILKA WAMBUI NGUGI.....2ND DEFENDANT

JUDGMENT

By a **Plaint** dated 23rd **October 2017**, the Plaintiff brought this suit against the Defendants and sought for Judgement against both of them jointly and severally for:-

- a. A Declaration that the Plaintiff being the sole Administrator of the Estate of Samuel Ngugi Kamau is entitled to possession and control of the suit property.
- b. An order of eviction of the Defendants from the suit property.
- c. A permanent Injunction restraining the Defendants whether by themselves or by their agents /servants /employees / assigns from entering or causing to be entered the suit property in furtherance of the trespass.
- d. Costs of this suit and
- e. Any other relief that this Honorable Court shall deem fit to grant.

The Plaintiff averred that she is the sole Administrator of the estate of *Samuel Ngugi Kamau* (deceased) by dint of the grant of Letters of Administration given on **12th May 1994**, by the Chief Magistrates Court at Thika in **Succession Cause No. 173 of 1990**. That in the month of **November 2000**, the 1st Defendant with the aid of the 2nd Defendant trespassed and put up residential houses on Plot No. **746 Block 20** being part of the estate of *Samuel Ngugi Kamau*.

Further that despite a Notice to vacate the suit property dated **6th July 2001**, served on him, the 1st Defendant has ignored, neglected and or refused to comply with the Notice. That the Plaintiff's Administration has not been revoked by a Court of competent jurisdiction and her position as a sole Administrator has been confirmed by the Ruling and orders of Honourable **Justice M.W Muigai** dated **24th November 2016**, in dismissing the 2nd Defendant's Application for the revocation of the Plaintiff's grant in **Succession Cause No. 3539 of 2004**. It was contended that the Defendants have no claim or right to deal with, occupy or possess the suit property as they are neither Administrators nor beneficiaries of the estate of the deceased. That the Administration of the Estate of the deceased remains incomplete as a result of the 1st Defendant's noncompliance with the Notice to vacate.

The suit is contested and the Defendants filed their Defence dated **15th August 2018**, and denied all the allegations made in the **Plaint**. The 1st Defendant averred that he has a legal right to occupy the suit property and that the Plaintiff's ill motivated intention to evict the 1st Defendant is not founded on any moral or legal basis and it is an act contrary to the law. That the 1st Defendant and his other 6 siblings are dependents of the deceased by virtue of being his children. The 1st Defendant acknowledged that at the time of his father's demise, he may not have been providing financial maintenance but had gifted them the plot **No. 746 Block 20** as a way of ensuring their general well being. That the deceased passed the suit property as a way of a lifetime gift. Further that before his demise, the 1st Deceased, father was aware that the said

property was in possession of the 1st Defendant although the Defendants did not have the financial muscle to put up residential houses. That the Defendants undertook to construct the residential homes after the demise of the deceased and until the demise of **Samuel Ngugi Kamau**, the Plaintiff had no contention. That the Defendants have always been opposed to the confirmation of grant as dependents.

The matter proceeded by way of viva voce evidence wherein the Plaintiff testified for herself and closed her case. The Defendants did not call any witness

PLAINTIFF'S CASE

PW1 Agnes Muthoni Ngugi adopted her witness statement dated **23rd October 2017** as her evidence in Court. She further relied on her list of documents as her further evidence and produced it as Exhibit 1. She urged the Court to allow her claim.

The Plaintiff filed written submissions which the Court has carefully read and considered and finds that the issue for determination is **whether the Plaintiff is entitled to the orders sought.**

Though the Defendant were served with Summons to Enter Appearance and filed their Defence, they did not participate in the hearing though duly served with the hearing Notice. The matter therefore proceeded without their participation and they did not adduce any evidence in support of their claim. Therefore, all the averments in their Defence remains just mere allegations as averments in pleadings are not evidence. The Plaintiff's evidence remained uncontroverted. In the case of **Shaneebal Limited...Vs...County Government of Machakos (2018)eKLR, where the Court cited the case of Janet Kaphiphe Ouma & Ano....Vs...Marie Stopes International (Kenya), Kisumu HCC No.68 of 2007**, where the Court held that:-

“In this matter apart from filing its statement of Defence the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st Plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations....Section 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support the same.”

However, uncontroverted evidence is not automatic evidence and the Plaintiff still has an obligation to prove her case.

The Plaintiff has sought for various orders amongst them that being the sole Administrator of the Estate of the deceased **Samuel Ngugi Kamau** she is entitled to possession and Control of the suit property, a permanent Injunction and an order of eviction plus costs of the suit.

The Plaintiff has produced in evidence a Certificate of Marriage confirming that that she was married to the said **Samuel Ngugi(Deceased)**. The Plaintiff has further produced in evidence a share certificate for **share No. 0087** and a letter dated **21st May 2001**, from **Ngoingwa Company Limited** confirming that the Clearance certificate and sub **plot 746** belonged to **Samuel Ngugi** and which indicated that the same should be transferred to the Plaintiff. From the documents produced in evidence, there is no doubt that the suit property belonged to **Samuel Ngugi (Deceased)**.

The Plaintiff has further produced in evidence Letters of Administration dated **10th September 1993**, and a Confirmed grant dated **12th May 1994**, confirming the Plaintiff as the sole beneficiary of the Estate of **Samuel Ngugi(Deceased)** and the heir of the suit property. The Court is thus satisfied that the said **Samuel Ngugi (Deceased)** was the owner of the suit property.

Further from the evidence adduced, the Court is also satisfied that the Plaintiff is the Administrator of the Estate of the late **Samuel Ngugi** and his sole beneficiary. Being the Administrator of the estate, all the property of the Deceased vests in her and being the sole beneficiary of the said Estate, there is no doubt that she is entitled to all the rights and interests of that appertain to the suit property.

The Court therefore finds that as the sole Administrator, the Plaintiff indeed is entitled to possession and Control of the suit property. As her evidence has not been controverted in any way, the Court further finds that the Defendants have no interest in the suit property as the Court in Cause **No. 3539 of 2004** affirmed the Plaintiff's position as the sole Administrator and beneficiary and the Court has confirmed the grant as per **Section 71 of the Law of Succession Act**. Thus having no interest in the suit property, the Defendants have no business being in possession of the same.

Consequently, the Court finds that the prayers as sought by the Plaintiff are merited.

Having carefully read and considered the Pleadings by the parties, the evidence adduced, the written submissions and provisions of law, the Court finds and holds that the Plaintiff has proved her case on the required standard of balance of probabilities. Consequently the Court enters Judgement for the Plaintiff against the Defendants jointly and severally as sought in the Plaintiff dated **23rd October, 2017** in terms of prayers No. **(a) (b) and (c)** plus costs of the suit.

As per prayer No. **(b)**, the Plaintiff to give the necessary **Notice** as provided by the law before the said eviction.

It is so ordered

DATED, SIGNED AND DELIVERED AT THIKA THIS 18TH DAY OF MARCH, 2021

L. GACHERU

JUDGE

18/3/2021

..... - **Court Assistant**

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic and in light of the directions issued by the Lordship, the Chief Justice on **15th March 2020**, this **Judgment** has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

With Consent of and virtual appearance via video conference – Microsoft Teams Platform

Mr. Wakhisi for the Plaintiff

Mr. Karinga holding brief for Mr. Wachira for the Defendants.

L. GACHERU

JUDGE

18/3/2021