



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC APPEAL NO. 4 OF 2018

TERESIA NJOKI GICHUKI.....APPELLANT

VERSUS

PAULINE KANYIRU GICHU.....1ST RESPONDENT

MILLENIUM PLOT DEVELOPERS.....2ND RESPONDENT

SAMUEL NJOROGE MUIRURI.....3RD RESPONDENT

(Being an appeal from the judgment made on 26.2.2018

by Principal Magistrate C.A Otieno Omondi in Thika CMCC 735 of 2009)

JUDGMENT

1. The appellant Teresia Njoki Gichuki was the defendant in the suit filed against her before the lower court by the 1st respondent Pauline Kanyiru Gichu vide a plaint dated 20.8.2009 in Thika CMCC No. 735 of 2009. The 1st respondent's case was that she was the owner of a plot no. 43 situated at Kiganjo having bought the same from one Nduati trading as Millenium developers. She pleaded that in the month of July 2009, the appellant approached her and told her she was the owner of the plot. The appellant then went into the plot destroyed the 1st respondent's materials and commenced the process of constructing a foundation of a building. The 1st respondent therefore sought an order of vacant possession of the suit land as well as a permanent injunction restraining the appellant from interfering with the said plot plus costs and interests.

2. The appellant filed her statement of defence dated 1.9.2009 denying the claim of the 1st respondent. She also lodged a counter-claim claiming the same plot, having bought the same from one Samuel Njoroge Muiruri. The appellant sought more or less similar orders like those of the 1st respondent.

3. During the trial the 1st and 2nd third parties were enjoined in the proceedings. The trial court delivered judgment on 26.2.2018 in favor of 1st respondent triggering this appeal.

4. The memorandum of appeal filed on 10.8.2020 contains the following grounds.

(i) The learned trial magistrate erred in law and fact in failing to appreciate that there was nexus in issues and facts between the defendant and the third parties and hence made a judgment that was misguided as to contribution and indemnity vis a vis third party proceedings.

(ii) The learned trial magistrate erred in law and fact in failing to take cognizance of the defendant's pleadings that there was a counterclaim otherwise arrived at a wrongful finding despite evidence having been led to the aforesaid context.

(iii) The learned trial magistrate erred in law and fact where she failed to appreciate that the defendant derived her rights to plot no. 43 from the 2nd and 3rd respondents and that which ranked paripassus to those of the 1st respondent.

(iv) The learned trial magistrate erred in law and fact in entering judgment in favour of the 1st respondent against the appellant in spite of the 1st respondent's failure to establish her case on a balance of probability.

(v) *The learned trial magistrate erred in law and fact accommodating pleadings by the respondent which did not disclose a reasonable cause of action.*

(vi) *The learned trial magistrate misguided herself in entering judgment against the 1st respondent thereby by misadventure forgetting the directions given that the cause as between the parties be determined on liability simultaneously.*

(vii) *The learned trial court erred in law and fact when it failed to frame out issues for determination thereby arriving at determination not versed in law otherwise.*

5. On 4.9.2020, this court gave directions in the following terms;

(i) *The appeal is hereby admitted for hearing.*

(ii) *The appeal to be canvassed by way of written submissions.*

(iii) *The appellant to file and serve their submissions within 14 days (by 21.9.2020).*

(iv) *The respondent to file and serve their submissions thereafter by 19.10.2020.*

(v) *The matter to be mentioned before the DR on 21.10.2020 to confirm the filing of submissions.*

(vi) *In the event of non-compliance on the part of the appellant the appeal shall stand as DISMISSED.*

(vii) *In the event of non-compliance on the part of the respondent the documents/submissions filed by the said respondent shall stand as expunged.*

(viii) *The file thereafter to be transmitted to me (Judge Mbugua) for the writing of the judgment.*

(ix) *Judgment shall be delivered on NOTICE.*

6. The notes of the Deputy Registrar made on 21.10.2020 are that; *“the appellant has not filed submissions”*. There was also no appearance for the appellant.

7. I find that the orders given on 4.9.2020 were self-executing. Thus the appeal stands as DISMISSED with costs to respondent for non-compliance with the orders of 4.9.2020.

DATED AND SIGNED AT MERU THIS 4TH DAY OF MARCH, 2021

HON. LUCY N. MBUGUA

ELC JUDGE - MERU

DELIVERED AT THIKA THIS 18TH DAY OF MARCH 2021

HON. LUCY GACHERU

ELC JUDGE - THIKA