



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 194 OF 2015

MAHENDRAKUMAR KESHAVLAL LADHA SHAH.....1ST PLAINTIFF

SUSHMA MAHENDRAKUMAR SHAH.....2ND PLAINTIFF

-VERSUS-

PETER KINORO MWICIGI.....DEFENDANT

JUDGMENT

1. This suit was heard on 11/2/2021 as an undefended cause. Service of summons to enter appearance was effected on the defendant through a notice carried in the Daily Nation edition of Friday 8th May 2015. The defendant neither entered appearance nor filed defence.

2. Through a plaint dated 9/3/2015, the plaintiffs sought the following verbatim orders against the defendant:

a. A permanent injunction do issue restraining the defendant and or her servants, agents, nominees and or any person acting under his authority from entering, encroaching, blocking access to, trespassing onto or in any way interfering with the quiet possession of the plaintiff's suit land Land Reference Number 4953/2044

b. An order directing the eviction of the defendant from the suit land L R 4953/2044

c. General damages for trespass

d. Mesne profits for the trespass

e. Costs and interests of the suit

3. The plaintiffs' case was that they were the registered proprietors (as joint tenants) of Land Reference Number 4953/2044 comprised in Grant Number IR 61457, situated in Thika Municipality and measuring 1.00 hectares. In 2014, they decided to develop the suit property. They engaged consultants to undertake the proposed development on the suit property. Their efforts to develop the suit property were thwarted by the defendant who blocked access to the suit property. They added that the defendant had since then trespassed on the suit property and had erected illegal semi-permanent structures thereon.

4. At the hearing, the 1st plaintiff testified as PW1 and the plaintiffs closed their case. He adopted his written statement dated 9/3/2015. He produced 15 exhibits, among them a certified copy of the Grant indicating that the plaintiffs were the registered proprietors of the suit property; and pictures of makeshift *mabati* structures allegedly erected on the suit property.

5. In his brief oral submissions, Mr Goringa, counsel for the plaintiffs argued that the defendant was a trespasser occupying a small portion of the suit property. He added that the defendant had ignored court papers despite being served on more than five occasions. Counsel argued that the defendant was infringing on the plaintiff's right to property and had no right to be on the suit land. He urged the court to grant the prayers sought in the plaint.

6. I have considered the plaintiffs' pleadings and evidence. The suit is undefended. The plaintiffs tendered evidence to demonstrate that they were the registered proprietors of the suit property. In the absence of defence and/or controverting evidence, the court is satisfied the plaintiffs have proved their case on a balance of probabilities. In the circumstances, the court grants to the plaintiffs prayers (a) (b) and (e) of the plaint.

7. The plaintiffs sought general damages and *mesne* profits on account of trespass. However, no evidence was led to assist the court assess

the two limbs of damages. In the circumstances, the court will award the plaintiffs nominal damages for trespass in the sum of Kshs 1,000,000/-

8. In the end, the suit herein is disposed in terms of the following orders:

- a. A permanent injunction is hereby issued restraining the defendant together with his agents, servants and or nominees and any person acting under his authority against entering, encroaching or blocking access to, trespassing onto or in any way interfering with the plaintiffs' quiet possession of Land Reference Number 4953/2044 comprised in Grant Number IR 61457 situated in Thika Municipality**
- b. An order is hereby issued directing the eviction of the defendant from the said parcel of land.**
- c. The defendant shall pay the plaintiffs nominal damages of Kshs 1,000,000 together with interest from the date of judgment**
- d. The Kenya Police Service Commander in Charge of the local Sub County shall oversee peaceful enforcement of the above eviction and injunction orders**
- e. The defendant shall bear costs of this suit.**

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 8TH DAY OF MARCH 2021.

B M EBOSO

JUDGE

In the Presence of: -

Court Assistant: June Nafula