



**Muthama v Njuguna & 2 others (Civil Suit 754 of 2017)
[2024] KEELC 4031 (KLR) (7 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4031 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
CIVIL SUIT 754 OF 2017
MN GICHERU, J
MAY 7, 2024**

BETWEEN

JIM NJUGUNA MUTHAMA PLAINTIFF

AND

VERONICAH WAIRIMU NJUGUNA 1ST DEFENDANT

PUBLIC HEALTH OFFICER (KAJIADO) 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. The plaintiff seeks the following reliefs against the defendants.
 - a. A permanent injunction restraining the 1st and 2nd defendants whether by themselves, agents or servants or whosoever is acting on their behalf from trespassing onto or dealing with Plot No. 723 Rongai, suit premises, in any manner whatsoever.
 - b. The 1st and 2nd defendants be ordered to compensate the plaintiff in damages arising from the illegal trespass, demolition or, eviction of tenants from the suit premises amounting to Kshs. 1, 271, 100/=.
 - c. That the court do order the 1st and 2nd defendants to pay monthly, a sum of Kshs. 230,000/- to the plaintiff in lieu of the foregone rent from the month ending December 2017.
 - d. A declaration that the plaintiff is the legal owner of the suit premises.
 - e. Any other order that the court may deem fit to grant in the circumstances.
 - f. Costs of the suit.



2. The plaintiff's case is as follows. He is the registered owner of the suit premises which he bought from James Gatundu. He has the original sale agreement and letter of allotment. The first defendant who is the plaintiff's estranged wife has fraudulently acquired a forged letter of allotment. On 15/1/2015, the first defendant in collusion with the second defendant wrote a letter condemning the buildings on the suit premises as uninhabitable and issued a notice of the tenants to vacate the premises. The first defendant was charged in a criminal case by the second defendant as the owner of the suit premises. Her prosecution in the criminal case was meant to give legitimacy to her forged documents and make her seem as the owner of the suit premises. On 22/12/2017, the 1st defendant in the company of the 2nd defendant hired goons who evicted the plaintiff's tenants and demolished the premises. The suit premises was developed for residential purposes and the plaintiff has been receiving monthly rent of Kshs. 230,000/- which he has lost since December 2017 due to the illegal acts of the defendants. The plaintiff has had the damage caused by the defendants assessed by a valuer and it comes to Kshs. 1, 271, 100/- which the plaintiff now claims from the defendants.
3. In support of his case, the plaintiff filed the following evidence.
 - i. His witness statement which is undated.
 - ii. Witness statements by James Gatundu Thiongo and James Kioi Ng'ang'a both dated 23/6/2022.
 - iii. Copy of ruling dated 30/5/2017.
 - iv. Copy of sale agreement dated 22/8/1994.
 - v. Copy of allotment in the name of James Gatundu Thiongo dated 22/8/1994.
 - vi. Copies of affidavits sworn by the plaintiff and James Gatundu Thiongo both dated 27/6/2016.
 - vii. Copies of receipts and rates clearance certificate both dated 25/3/1982 issued to Peter Ngamate.
 - viii. Copy of statutory notice dated 15/1/2016 issued to the plaintiff by Ongata Rongai Health Office in respect to the suit premises.
 - ix. Copy of transfer instrument dated 22/8/1994.
 - x. Copy of affidavit by the 1st defendant dated 18/1/2010.
 - xi. Copy of letter dated 18/1/2010 written by the 1st defendant.
 - xii. Copy of certificate of official search dated 16/5/2016.
 - xiii. Copy of letter by National Land Commission to the plaintiff dated 5/5/2017.
 - xiv. Copy of report by Pinnacle Engineering dated 14/3/2017.
 - xv. An affidavit, an applicant and a response in this case and ELC 765 of 2017.
 - xvi. Report on damages to the suit premises.
 - xvii. Photographs of the damage to the suit premises.
4. The 1st defendant, through counsel on record filed a defence and counterclaim dated 16/4/2018 in which she avers as follows.

Firstly, she is the bonafide-registered owner of the suit premises which she purchased in July 1993.



Secondly, the tenants in the suit premises were lawfully evicted following a court order issued in Criminal Case No. 26 of 2016.

Thirdly in the counterclaim, the defendant claims Kshs. 5, 610, 250/- being rent from the premises collected between November 2015 and December 2017 at the rate of Kshs. 369,750/- per month. She prays for the dismissal of the plaintiff's suit and for judgment on her favour in the counterclaim.

5. In support of her case, the 1st defendant filed the following evidence.
 - i. Witness statement dated 16/4/2018.
 - ii. Copy of certificate of ownership dated 22/8/1994.
 - iii. Copy of certificate of official search dated 4/10/2016.
 - iv. Copy of letter dated 20/12/2016 withdrawing Criminal Case No. 900/2016.
 - v. Copy of statutory notice dated 4/10/2016.
 - vi. Copy of summons and change sheet in Criminal Case No. 26 of 2016.
 - vii. Copy of ruling dated 30/5/2017.
 - viii. Copy of ruling dated 4/12/2017 in this case.
 - ix. Copy of order dated 20/12/2017.
 - x. Copy of order in Tribunal Case No. 931/2015.
 - xi. Copy of statement of deposits in Tribunal Case No. 931/2015.
 - xii. Copy of letter dated 19/7/1993 from Commissioner for Cooperative Development.
 - xiii. Copy of affidavit dated 18/1/2010.
 - xiv. Copy of ruling in children Case No. 1036/2015 dated 16/10/2015.
6. At the trial on 15/11/2013, only the plaintiff and his two witnesses attended court. The witnesses included James Kioi Nganga. They adopted their witness statements as their evidence and the plaintiff adopted the documents on record as his evidence. In summary, James Gatundu Thiongo said that he was the owner of the suit premises which he sold to the plaintiff on 22/8/1994. The plaintiff paid him in kind by handing over his vehicle KZR 133 to James Thiongo.
7. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and testimony of the trial. I have not benefited from the written submissions by learned counsel for the plaintiff.

I find that only two issues emerge from the evidence on record.

 - i. Who between the plaintiff and the 1st defendant is the lawful owner of the suit premises.
 - ii. Has the plaintiff proved that he is entitled to compensation and damages claimed in paragraph (b) and (c).
8. On the first issue, I find that it is the plaintiff who has a better claim to the suit premises. Not only does he have the history of the suit premises and the documents to support that history but he has also availed the person who sold the land to him. I believe the plaintiff and his two witnesses. I do not



believe that the 1st defendant owns the suit premises. She does not have credible evidence on how she acquired the premises.

9. Regarding the second issue, the plaintiff has not availed any records like bank statements or deposit slips to prove the amount of rent collected monthly. He has also not adduced any evidence of the overheads such as electricity and water bills, security and management expenses. Apart from the report by Pinnade Engineering dated 14/3/2017, the plaintiff has not availed evidence in form of receipts and invoices showing that he spent the Kshs. 1, 271,100/- claimed under paragraph (b).
10. In conclusion and for the reasons given above, I enter judgment for the plaintiff against the 1st defendant as prayed for in paragraph (a), (d) and (f) in paragraph (1) of this judgment.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 7TH DAY OF MAY 2024.

M.N. GICHERU

JUDGE

