



**Kariuki v Kinuthia (Environment & Land Case 1207 of 2016)  
[2023] KEELC 18720 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18720 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1207 OF 2016**

**J OMANGE, J**

**JULY 6, 2023**

**BETWEEN**

**GEORGE NGURE KARIUKI ..... PLAINTIFF**

**AND**

**STEPHEN KINUTHIA ..... DEFENDANT**

**JUDGMENT**

1. This case relates to land title LR/KJD/ OLchoro-Onyore/ 3448, KJD /Olchoro/-Onyore 3449, KJD/ Olchoro/ -Onyore 5011, KJD/Olchoro/Onyore/4053 hereinafter referred to as the suit properties.
2. In a plaint filed on 4<sup>th</sup> October, 2016 the plaintiff deponed that at all material times he was the registered owner of the suit premises having purchased them from Kili Ole Sankare and Leshan Ole Sankare. He depones that in the year 2016 the Defendant wrongfully entered the suit premises and erected a fence on the properties. He states that by the time the Defendant was entering on the suit premises he had been in possession of the land for over 20 years.
3. He sought an order for permanent injunction restraining the Defendant whether by himself, his hirelings, servants, agents or otherwise however from trespassing, encroaching, constructing, erecting temporary structures, entering, remaining, or otherwise interfering with the plaintiff's quiet possession of all those properties comprised in LR/KJD/ Olchoro-Onyore/ 3448, KJD /Olchoro/-Onyore 3449, KJD/Olchoro/ -Onyore 5011, KJD/Olchoro/Onyore/4053
4. The firm of W.G Wambugu initially appeared for the Defendant but filed an application dated 11<sup>th</sup> February, 2022 seeking to withdraw from acting for the Defendant for want of prosecution. This application was allowed on 23<sup>rd</sup> March, 2022.
5. The plaintiff testified in court on 15<sup>th</sup> November, 2022 and produced the witness statement dated 13<sup>th</sup> September, 2016 in which he told the court that he visited the above suit properties in the month of August, 2016 to find strangers digging holes and erecting a fence and temporary structures. He decided



to file a suit so as to halt the actions of the Defendant. The Defendant did not file a defence or attend court even after the court had directed that he be served personally.

6. The plaintiff's testimony was uncontroverted. However the plaintiff still has a burden to discharge the burden placed on him by section 107 and section 108 of the Evidence Act which provides : -

107. Burden of proof

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

7. The issue of uncontroverted evidence was addressed by Justice Mwongo in Peter Ngigi & Another (suing as legal representative of the Estate of Joan Wambui Ngigi) v Thomas Ondiki Oduor & Another 2019 eKLR where he stated: -

“There are any authorities that deal with the question of uncontroverted evidence, such as the situation in the present case where the defence did not show up at the trial. The general position running through such authorities is that uncontroverted evidence bears a lot of weight and a statement of defence without any evidence to support the assertions therein will amount to mere statements.

8. The Defendant did not tender any evidence to counter the testimony that he had commenced construction of a fence and temporary structures on the suit properties which are registered in the name of the Plaintiff who has all the rights bestowed upon a registered land owner.

9. The plaintiff is entitled to quiet possession of the suit properties. Consequently, Judgement is entered for the plaintiff in the following terms;

- a. an order for permanent injunction is hereby issued restraining the Defendant whether by himself, his hirelings, servants, agents or otherwise however from trespassing, encroaching, constructing, erecting temporary structures, entering, remaining, or otherwise interfering with the plaintiffs quiet possession of all those properties comprised in LR/KJD/ Olchoro-Onyore/ 3448, KJD /Olchoro/-Onyore 3449, KJD/Olchoro/-Onyore 5011, KJD/Olchoro/ Onyore/4053.
- b. The plaintiff is awarded costs of the suit

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 6<sup>TH</sup> DAY OF JULY 2023.**

**Judy Omenge**

**JUDGE**

In the presence of: -

Mr. Senteu for the Plaintiff

Steve - Court Assistant

