



**Lagat v Rotich (Environment & Land Case 220 of 2014)
[2023] KEELC 20638 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20638 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 220 OF 2014
EO OBAGA, J
OCTOBER 12, 2023**

BETWEEN

EVERLYNE JEPTABUT LAGAT PLAINTIFF

AND

DINA JEPNGETICH ROTICH DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the Defendant in which she claimed the following reliefs: -
 - a. A declaration that the Defendant is a trespasser and is illegally residing on the Plaintiff's parcel of Land Uasin Gishu/Kuinet "B" Scheme/36.
 - b. An order of eviction should be issued ejecting the Defendant her agents or servants from parcel Uasin Gishu/Kuinet "B" Scheme/36
 - c. An order of permanent injunction should be issued to bar the Defendant, her agents or servants from using the parcel of land Uasin Gishu/Kuinet "B" Scheme/36.
 - d. General damages/mesne profit for trespass.
 - e. Cost of this suit.
 - f. Interests on (d) and (e).
 - g. Further relief as this Honourable court may deem fit and just to grant.
2. The Defendant filed a defence and raised a counter-claim in which she sought the following reliefs:-
 - a. A declaration that the suit property belongs to the Defendant.
 - b. Cancellation of title registered in the Plaintiff's name and for registration of title in the Defendant's name.



3. The Plaintiff is the wife of the late Barabara Kipchumba Lagat who died on 5/6/2013 (Deceased). The deceased was the initial registered owner of LR. No. Uasin Gishu/Kuinet “B” Scheme/36 measuring 2.3 hectares (suit property). The Plaintiff later processed title in her name which title was issued in 18/12/2013.
4. The Plaintiff testified that the deceased got the suit property from the Settlement Fund Trustee (SFT). He fully repaid the loan owed to SFT and he obtained title on 5/3/2012. It is the Plaintiff’s evidence that the Deceased had permitted the Defendant to graze her animals on the suit property. The Defendant later put up a house without permission of the Deceased.
5. The Deceased later on asked the Defendant to vacate the suit property but she refused. The matter was taken before the area chief for arbitration. The Deceased offered the Defendant one acre but she refused. It is on this basis that the Plaintiff now wants to have the Defendant evicted from the suit property.
6. The only issue for determination is whether there is any suit on which judgement can be pronounced in favour of the Plaintiff. The Defendant did not testify as she had already died and no substitution was carried out.
7. The Defendant passed on on 17/8/2022. There was no substitution done. This being the case, her counter-claim and the suit against her abated on 16/8/2023. It therefore follows that no judgment can be pronounced on an abated suit. Both the main suit and the counter-claim are hereby marked as abated with no order as to costs. The file is accordingly closed.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 12TH DAY OF OCTOBER, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Ayieko for Plaintiff.

Court Assistant –Laban

E. O. OBAGA

JUDGE

12TH OCTOBER, 2023

