



Gachoka & another (Suing as the Administrators of the Estate of the Late Gachoka Kahawa) v Nduta & another (Environment and Land Case 22 of 2014) [2019] KEELC 5114 (KLR) (22 May 2019) (Judgment)

Teresia Wangari Gachoka & another v Florence Nduta & another [2019] eKLR

Neutral citation: [2019] KEELC 5114 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 22 OF 2014**

DO OHUNGO, J

MAY 22, 2019

BETWEEN

TERESIA WANGARI GACHOKA 1ST PLAINTIFF

SAMMY MWANGI GACHOKA 2ND PLAINTIFF

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE
GACHOKA KAHAWA**

AND

FLORENCE NDUTA 1ST DEFENDANT

FLORENCE WAMBUI 2ND DEFENDANT

JUDGMENT

1. Through amended plaint filed on 11th February 2014, the plaintiffs averred that they are the administrators of the estate of Gachoka Kahawa (deceased) who is the registered proprietor of all a parcel of land known as Nakuru Municipality Block3/1104 (the suit property). That the defendants encroached on the suit property and commenced developments thereon without consent. That efforts to get the defendants to vacate had been futile. The plaintiffs therefore prayed for eviction of the defendants from the suit property and a permanent injunction restraining them, their agents, servants and or employees from entering into or disposing of the suit property.
2. Despite being served, the 1st defendant did not enter appearance or file any defence. She did not attend the hearing of the suit either. On the other hand, the 2nd defendant who entered appearance did not file any defence. Ultimately, counsel for the plaintiff informed the court on 11th May 2017 that the 2nd defendant passed away on 6th June 2014. No application for substitution was filed in respect of the case



against her. Consequently, in view of the provisions of Order 24 Rule 4 of the Civil Procedure Rules, the suit against the 2nd defendant had abated on 6th June 2015.

3. At the hearing, only the 1st plaintiff testified. She stated that Gachoka Kahawa (deceased) was her husband and that she obtained letter of administration for his estate in High Court Succession Cause No. 178 of 1998 (Nakuru) followed later by Certificate of Confirmation of Grant on 2nd June 2011. I produce a copy as exhibit. She produced a copy of the Certificate of Confirmation of Grant as an exhibit. She added that the deceased owned a parcel of land in Nakuru being Nakuru Municipality Block 3/1104 (the suit property) located in Shabab area. She produced a copy of Certificate of Lease for the plot dated 12th November 1993 as an exhibit. She added that the defendants are occupying the plot. They constructed wooden and mud walled houses on it. She never allowed them to do so and has told them to vacate but they refused to vacate. They claim that the plot was given to them by the Municipal Council of Nakuru so that they could sell charcoal there. However, the council wrote to them a letter dated 10th November 1992 telling them to vacate the plot. She therefore urged the court to grant judgment as prayed in the plaint.
4. The plaintiffs' case was closed at that point. There being nobody to prosecute the defence case, it was also closed. In brief written submissions, counsel for the plaintiffs stated that the plaintiffs had proved their case and urged the court to enter judgment as prayed. No submissions were filed for or by the surviving 1st defendant.
5. I have considered the pleadings, the evidence and the submissions herein. As already noted, the claim against the 2nd defendant abated. The plaintiffs' claim against the 1st defendant is uncontested and the evidence tendered remains uncontroverted. From the material placed before the court, I am satisfied that the plaintiffs are the administrators of the estate of Gachoka Kahawa and that they obtained certificate of confirmation of grant in respect of his estate on 2nd June 2011 in High Court Succession Cause No. 178 of 1998 (Nakuru). The suit property herein was owned by the deceased as can be seen from the copy of certificate of lease and was distributed to the plaintiffs to hold in half shares each. I am equally persuaded that the 1st defendant is occupying the suit property and that she has constructed wooden and mud walled houses on it without the plaintiffs' consent. In sum, I am satisfied that the plaintiffs have proven their case against the 1st defendant on a balance of probabilities.
6. I therefore enter judgment for the plaintiffs against the 1st defendant as follows:
 - i. I order the 1st defendant to vacate from the parcel of land known as Nakuru Municipality Block3/1104 within thirty (30) days from the date of delivery of this judgment.
 - ii. In default, the 1st defendant be evicted from the parcel of land known as Nakuru Municipality Block3/1104. The eviction to be done in accordance with the provisions of section 152G (1) (d) to (h) of the Land Act, 2012.
 - iii. I grant a permanent injunction restraining the 1st defendant, her agents, servants and/or employees from entering into or disposing of the parcel of land known as Nakuru Municipality Block3/1104.
 - iv. Costs to the plaintiffs.
7. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAKURU THIS 22ND DAY OF MAY 2019.

D. O. OHUNGO



JUDGE

In the presence of:

Ms Cheruto holding brief for Mrs Ngugi for the plaintiff

No appearance for the 1st defendant

No appearance for the 2nd defendant

Court Assistants: Beatrice & Lotkomoi

