



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC CASE NO. 293 OF 2014**

***(Formerly Nyeri HCC No. 63 of 2009)***

**GODFREY WACHIRA MUTWAKARA.....PLAINTIFF**

**-VERSUS-**

**MIRIAM WARUGURU..... DEFENDANT**

**JUDGMENT**

1. By a plaint dated 27<sup>th</sup> August, 2008 and filed on 4<sup>th</sup> May, 2009 the plaintiff herein filed this suit seeking judgment against the defendant for a declaration that the defendant has trespassed into his parcel of land known as L.R. No. Nyeri/ Ngarengiro/610 (hereinafter referred to as the suit property); a permanent injunction to restrain the defendant, her servants and/or agents from interfering or in any other way dealing with the suit property, general damages for trespass to his land, costs of the suit and interest thereof.

2. The plaintiff's suit is premised on the ground that the defendant who owns the parcel of land known as Nyeri/Ngarengiro (Settlement Scheme) 574 measuring 2.7 hectares or thereabout, has unlawfully trespassed into his property (the suit property herein), erected a fence therein, cutting off a very big piece of land therefrom thus denying him the use of the portion of land cut off.

3. Through her statement of defence filed on 29<sup>th</sup> June 2009, the defendant denied the allegations leveled against her and averred that the dispute between the plaintiff and her concerning the boundary of her parcel of land and that of the plaintiff was resolved by the District Land Registrar, Nyeri.

4. Terming the plaintiff's suit misconceived, bad in law, scandalous and frivolous, the defendant argues that the plaintiff ought to have appealed the decision of the Land Registrar concerning the common boundaries of their parcels of land, which he did not do.

5. When the matter came up for hearing, parties adduced evidence reiterating their respective positions concerning the subject matter of this suit and at close of hearing, filed submissions, which I have read and considered.

6. From the pleadings filed in this matter and the submissions, the sole issue for determination is found to be whether the plaintiff has made up a case for being granted the orders sought.

7. On that issue, having read and considered the evidence adduced in this matter and in particular the report produced by the Land Adjudication and Settlement Officer confirming the defendant's contention and testimony to the effect that there exists no boundary dispute between the parcels of land herein and there being no evidence offered by the plaintiff to controvert that evidence, I find and hold that the plaintiff has not made up a case for being granted the orders sought. Consequently, I dismiss his claim with costs to the defendant.

8. Orders accordingly.

**Dated, signed and delivered in open court at Nyeri this 3<sup>rd</sup> day of October, 2018.**

**L N WAITHAKA**

**JUDGE**

Coram:

Godfrey Wachira – plaintiff

N/A by the defendant

Court assistant - Esther