



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ELCC No. 258 OF 2017

MICHAELA CHERRETT.....PLAINTIFF

VERSUS

CHRISTINE NARUMU LAPENDO.....DEFENDANT

JUDGMENT

1. Proceedings in this matter commenced through the plaint filed on 22nd June 2017 where the plaintiff stated that she is the registered owner of the parcel of land known as Nakuru/Municipality Block 17/291. She averred that she acquired the suit property on or about 15th July 2005, that it had a fully furnished and developed residential house and that she allowed her grandfather William Blunt to reside in it.

2. The plaintiff averred further that the defendant lived with her said grandfather as a caregiver and friend until 24th November 2007 when he passed away. That she gave the defendant the option of either purchasing the property or vacating. The defendant declined to purchase the property and therefore a notice to vacate was issued to her which she ignored.

3. The plaintiff therefore prayed for judgement against the defendant for:

i) *A mandatory injunction directing the defendant whether by herself or through her servants, agents, employees, assigns or anybody claiming under her to forthwith vacate the plaintiff's property known as Nakuru/Municipality Block 17/291.*

ii) *An order of permanent injunction restraining the defendant whether by herself or through their servants, agents, employees, assigns or anybody claiming under her and or anybody whatsoever from re-entering, encroaching, trespassing, remaining on, putting up any structures thereon, leasing, damaging, wasting away and or in any way interfering with the plaintiff's property known as Nakuru/Municipality Block 17/291*

iii) *Costs of this suit; and*

iv) *Any other relief that this honourable court deems fit.*

4. The defendant did not file any statement of defence.

5. At the hearing, James Mbugua Njenga testified as the plaintiff's sole witness. He adopted his witness statement dated 20th June 2017 as his evidence and stated that the plaintiff gave him a specific power of attorney dated 19th May 2017 and registered on 14th June 2017. In the witness statement, he essentially reiterated and expanded on the averments in the plaint and added that a notice to vacate dated 12th July 2016 had been served upon the defendant.

6. Mr Njenga testified further that prayer i) of the plaint has been overtaken by events as the defendant vacated the property on 31st August 2018 and that her son contacted the plaintiff seeking for access to the suit property to remove her belongings. Among others, he produced a copy of each of the following documents as exhibits: power of attorney dated 9th May 2017, Certificate of Lease dated 15th July 2005, certificate of official search dated 28th June 2016 and notice to vacate dated 12th July 2016.

7. The plaintiff's case was then closed. The plaintiff elected not to make any submissions and urged the court to render judgment.

8. I have considered the plaint herein and the evidence tendered. The only issue that arises for determination is whether a permanent injunction should issue as prayed. As opposed to an interlocutory injunction, a permanent injunction is issued upon the hearing of a suit on its merits and is based on the evidence tendered by the parties.

9. It is not in dispute that the plaintiff is the registered proprietor of the suit property as is indeed confirmed by the certificate of lease dated

15th July 2005 and certificate of official search dated 28th June 2016. Equally, I am satisfied on the basis of the material placed before the court that the defendant has previously entered into the property and that she initially refused to vacate despite being asked to do so through notice to vacate dated 12th July 2016. She later vacated on 31st August 2018, over a year after the filing of this suit. Even though she has since vacated, the plaintiff as registered proprietor is entitled to keep her from ever returning to the property.

10. I am persuaded that the plaintiff has made a case for the grant of the permanent injunction sought. Her case is not challenged at all by the defendant.

11. I therefore enter judgment in favour of the plaintiff as follows:

a) A permanent injunction is hereby issued restraining the defendant whether by herself or through their servants, agents, employees, assigns or anybody claiming under her from re-entering, encroaching, trespassing upon, remaining on, putting up any structures thereon, leasing, damaging, wasting and or in any way interfering with the plaintiff's property known as Nakuru/Municipality Block 17/291.

b) Costs are at the discretion of the court. Considering that the defendant vacated on her own volition prior to the hearing of this suit and taking into account the circumstances in which she entered the property, I order that each party bears own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF MAY 2021.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Litoro for the plaintiff

No appearance for the defendant

Court Assistants: B. Jelimo & J. Lotkomo