



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ELCC NO. 390 OF 2016

JAQUELINE NJERI NJUGUNA.....1ST PLAINTIFF

JUDY WAIRIMU NJUGUNA.....2ND PLAINTIFF

(Suing as the Administratrixes of the estate of David Ng'ang'a Njuguna (Deceased))

VERSUS

BISHOP ZABLON MBUGUA KARANJA.....1ST DEFENDANT

MARY WANJIKU MUNGA.....2ND DEFENDANT

TABITHA NJERI MWANGI.....3RD DEFENDANT

DAVID NJOROGE NJENGA.....4TH DEFENDANT

JOHN MBUGUA WACHIRA.....5TH DEFENDANT

JUDGMENT

1. Proceedings in this matter commenced through plaint filed on 22nd September 2016. The plaintiffs later filed amended plaint dated 5th November 2019. The plaintiffs averred that they were appointed administratrixes of the estate of David Ng'ang'a Njuguna, their deceased father in Nairobi HC Succession Cause No. 1217 of 2012. That the deceased was the owner of the property known as land reference 1556/5 situated at South East of Naivasha Town measuring about 7.951 hectares. They averred further that in the month of August 2009, the defendants trespassed onto the property and constructed houses with the intention of permanently occupying the land. That despite their demand for the defendants to leave the suit property, the defendants refused to vacate.

2. The plaintiffs therefore prayed for judgement against the defendants for:

A. That the defendants by themselves, servants, agents or any person acting on their behest be ordered to give vacant possession of land reference number 1556/5 and in default, their servants, agents or any person acting on their behest and the defendants properties be forcefully evicted and removed from land reference number 1556/5 at the defendants' expense.

B. That a permanent injunction restraining the defendants by themselves, agents, servants, assignees or any person acting on their behest from encroaching, entering or trespassing onto land reference number 1556/5.

C. General damages for trespass

D. Cost of the suit.

E. That the O.C.S Naivasha Police station be ordered and directed by the court to provide security when implementing or enforcing orders A and B above.

3. The 1st, 2nd 3rd and 5th defendants neither filed defence nor participated in the proceedings. Ultimately, the case against them was withdrawn on 27th January 2020.

4. The 4th defendant filed a statement of defence in which he averred that he bought five acres of parcel number 1556/7 from the late David

Ng'ang'a Njuguna and his wife Jemima Njuguna for a consideration of KShs 1,200,000. That they entered into an agreement on 2nd March 2004 which was signed by the 2nd plaintiff and Jemima Njuguna on behalf of the late David Ng'ang'a Njuguna. He averred further that the late David Ng'ang'a Njuguna engaged a surveyor who excised five acres from the suit property and that he took occupation and further subdivided the five acres into plots of 40 x 80 ft and sold them to 59 people. He denied all the other allegations in the amended plaint and urged the court to dismiss the suit with costs.

5. At the hearing, the 2nd plaintiff Judy Wairimu Njuguna testified and adopted her witness statement dated 5th November 2019 and filed on 8th November 2019 as her evidence in chief. She testified that she is a co-administrator of the estate of her late father, David Ng'ang'a Njuguna and was granted letters of administration in Nairobi High Court Succession Cause No. 1217 of 2012 on 14th January 2013. That the deceased was the registered owner of LR No. 1556/5 measuring 7.951 hectares and had established a school known as Vantage High School and Teachers Training College. She stated that they have never sold the land to the 4th defendant and that the deceased still remains the registered owner of the suit property. She testified further that the 4th defendant encroached into the suit property by seven acres and put up some structures thereon and that they are afraid he may encroach further. She produced copies of the following documents as exhibits; grant of letters of administration intestate, transfer dated 21st September 1987 and a certificate of title.

6. The plaintiffs' case was then closed.

7. There was no appearance for the 4th defendant during the hearing. Consequently, his case was closed upon an application to that effect by counsel for the plaintiffs.

8. The plaintiffs filed their submissions. They stated that once the 1st, 2nd, 3rd and 5th defendant were served with the amended plaint they voluntarily vacated the suit property which led them to withdraw the case against them. They then reiterated the 2nd plaintiff's testimony during the hearing and submitted that the 4th defendant trespassed on the suit property and that they asked him to vacate but he refused. The plaintiffs relied on **Sections 24 (a), 25(1) and 26(1) of the Land Registration Act 2012, Article 40 (1) and (2) of the Constitution** and the cases of **Benjamin Kipkulei vs. Shadrack Kamamia & 7 Others Nakuru H.C ELC 346 of 2015** and urged the court to grant the prayers sought in the amended plaint.

9. I have carefully considered the pleadings, the evidence and the submissions herein. Although the 4th defendant filed a defence, he did not adduce any evidence to challenge the plaintiffs' case or to support his own defence. Consequently, the plaintiffs' case remains unchallenged.

10. From the material on record, the plaintiffs have established that they were appointed administratrixes of the estate of David Ng'ang'a Njuguna on 14th January 2013 in Nairobi HC Succession Cause No. 1217 of 2012. They have also produced a copy of a certificate of title duly certified as a true copy of the original by the Registrar of Titles on 21st August 2019. The said title demonstrates that David Ng'ang'a Njuguna became the registered proprietor of the suit property on 21st September 1987. Pursuant to **Section 26 of the Land Registration Act**, the certificate of title is conclusive evidence of proprietorship. Further, pursuant to **Section 24** of the Act, the registration of David Ng'ang'a Njuguna as the proprietor vested in him and his estate the absolute ownership of the suit property together with all rights and privileges thereto.

11. Although the 4th defendant claimed in his statement of defence that he bought five acres of the suit property from the late David Ng'ang'a Njuguna and his wife, he did not adduce any evidence to support such a claim. He equally did not challenge the plaintiffs' claim that he trespassed onto the suit property and refused to vacate despite demands to do so.

12. I am persuaded that the plaintiffs have proven their case against 4th defendant on a balance of probabilities and are therefore entitled to the prayers sought in the amended plaint. The plaintiffs also sought general damages for trespass but did not make any specific submissions as to the quantum of damages. I will therefore not award that head of the claim.

13. In the result, I enter judgment as follows:

a) The 4th defendant (David Njoroge Njenga), his servants, agents and any person acting on his behalf to vacate and give vacant possession of Land Reference Number 1556/5 to the plaintiff within 30 (thirty) days of service of this order.

b) In default, the 4th defendant (David Njoroge Njenga), his servants, agents and any person acting on his behalf be evicted from Land Reference Number 1556/5.

c) A permanent injunction is hereby issued restraining the 4th defendant (David Njoroge Njenga) by himself, his agents, servants or any person acting on his behalf from encroaching, entering or trespassing onto Land Reference Number 1556/5.

d) The O.C.S Naivasha Police Station to provide security during the enforcement (b) above.

e) The 4th defendant (David Njoroge Njenga) shall pay the plaintiffs' costs of the suit.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 24TH DAY OF JUNE 2021.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Karanja Mbugua for the plaintiffs

No appearance for the defendants

Court Assistants: B. Jelimo & J. Lotkomoi