



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO 1322 OF 2014

RACHEL NJOKI MUCINA.....1ST PLAINTIFF

NANCY WAMBOI.....2ND PLAINTIFF

=VERSUS=

JOHN MWAURA..... DEFENDANT

JUDGMENT

1. Through a plaint dated 13/10/2014, the 1st plaintiff instituted this suit against the defendant. Subsequently, an amended plaint was filed on 23/6/2017 through which the 2nd plaintiff came on board. The two plaintiffs sought the following verbatim orders against the defendant:

a) An eviction order against the defendant by himself or their agents, servants or employees or any other party acting on their behalf to vacate Plot numbers I.7 and I.7B excised from LR No 10904/04 Ruai, Nairobi County.

b) A declaration that Plot Number I.7 and I.7B excised from LR No 1094/2 situated in Ruai, Nairobi County, belong to the 1st and 2nd plaintiffs.

c) Mesne profits

d) Costs and interests.

e) Any other relief the court may deem fit and just to grant.

2. The plaintiffs' case is that the 1st plaintiff is mother to the 2nd plaintiff. They are the owners of the Plots known as I.7 and I.7B excised from LR NO 10904/02 (**the suit property**) situated within Ruai in Nairobi. They contend that the 1st plaintiff purchased the suit properties on 28/11/1982 and had them registered in the names of the two plaintiffs. In 2007, the defendant trespassed onto the suit properties by erecting temporary structures thereon. They further contend that as result of the trespass, they have been denied the use and occupation of the suit properties. Consequently, they seek the above orders.

3. Summons to enter appearance was first issued on 11/11/2014. Upon amending the plaint, fresh summons was issued on 28/6/2017. The affidavits of service on record show that the defendant was served both physically and through a notice in the Standard Newspaper but failed to appear. Consequently, hearing proceeded ex parte on **18/2/2020**. The defendant did not enter appearance or file a defence.

4. The 2nd plaintiff testified on her own behalf and on behalf of the 1st plaintiff on 18/2/2020. Her evidence was that on 28/11/1982, the 1st plaintiff purchased the suit properties from Embakasi Ranching Company and had it registered in her name and that of the 2nd plaintiff. She was given vacant possession thereafter. In 2007, the defendant trespassed on the suit properties and erected temporary structures thereon. She visited the suit properties severally to stop the defendant's illegal construction and occupation. She stated that the defendant has continued to trespass on the suit properties and has put up illegal structures and a fence. She produced a bundle of 8 documents. The defendant neither entered appearance nor tendered defence.

5. The plaintiffs filed written submissions on 25/2/2020 through the firm of Y Jeruto & Company Advocates. Counsel submitted that since the suit was undefended, the plaintiffs were entitled to the prayers sought. Reliance was placed on the decision in **Jimmy Musyoki Kilonzo v Philip Nthei [2008] eKLR** where Lenaola J (as he then was) granted the plaintiff's prayers in an undefended suit. Reliance was also placed on **Ali Kolela Montet v Moses Ekwiy Elany [2014] eKLR** where an eviction order was issued against the defendants in an undefended suit.

6. I have considered the plaintiffs pleadings, evidence and submissions. Their claim is unopposed. The affidavits on record show that the defendant was served both personally on 16/12/2014 and through a notice published in the Standard Newspaper on 31/8/2017. He neither entered appearance nor filed defence.

7. The plaintiffs led evidence to demonstrate that the 1st plaintiff acquired the suit properties from Embakasi Ranching through purchase of shares in the said Company. Consequently, the 1st plaintiff was allocated the suit properties. The suit properties are unsurveyed plots within a large parcel of land described as Land Reference Number 10904/02. Subsequent to her acquisition of the two plots, the 1st plaintiff caused them to be informally registered in the joint names of herself and her daughter, the 2nd plaintiff. Consequently, in the absence of any defence and/or controverting evidence, the court finds that, as against the defendant herein, the plaintiffs are the beneficial owners of the suit properties.

8. The first prayer is a plea for an eviction order. The second prayer is a declaratory plea. The third prayer is a plea for *mesne* profits. In the absence of defence, I will grant prayers (a), (b) and (c) in terms to be set out in the disposal order. Because no evidence was led to assist the court assess *mesne* profits, I will only award the plaintiffs nominal *mesne* profits of Kshs 500,000.

9. Consequently, the court makes the following disposal orders against the defendant in this suit.

a) A declaratory order is hereby made that as against the defendant, the plaintiffs are the beneficial owners of Unsurveyed Plot Number I.7 and I.7B said to form part of Land Reference Number 10904/02 and situated in Ruai, Nairobi City County.

b) It is directed that the defendant shall together with his servants, agents and or employees, be evicted from the suit properties.

c) The plaintiffs are awarded nominal mesne profits of Kshs 500,000 against the defendant.

d) The defendant shall bear costs of this suit.

e) Because of the prevailing Covid-19 (Corona Virus) Pandemic, there shall be a stay of execution for 60 days from today.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 11TH DAY OF MAY 2020.

B M EBOSO

JUDGE

In the presence of:-

Mr Naibei holding brief for Mrs Jeruto for the Plaintiffs

Court Clerk - June Nafula