



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 53 OF 2017

RENET RUNJI NJERU.....PLAINTIFF

VERSUS

JUSTUS W.NJUGUNA.....DEENDANT

JUDGMENT

By a Plaint dated **6th February 2017**, the Plaintiff herein brought this suit against the Defendant seeking for orders that;

- a) A declaration that Title No. Thika Municipality Block 2/1100 belongs to the Plaintiff.*
- b) An eviction order do issue against the Defendant compelling him to vacate Title No. Thika Municipality Block 2/1100*
- c) General Damages*
- d) Costs of the suit*
- e) Interests on (d) above*
- f) Any other just relief*

In his statement of Claim, the Plaintiff averred that she is the registered owner of the suit property which was allocated to her on **21st July 1995**, as unsurveyed residential **plot No. 3** - Thika Municipality. She further averred that upon allocation, she paid all the requisite standard premium and other charges all amounting to **Kshs. 76,990/=** to pave way for processing of the Certificate of lease. Further that the Defendant without any right, forcefully trespassed onto the suit property and constructed on the said plots without her consent and is fraudulently claiming that the plot belongs to him.

She particularised fraud by the Defendant as; forging a letter of allotment for the suit property and purporting to have been issued by the Ministry of lands.

It was her contention that the Defendant has fenced and developed the suit property and his continued occupation of the suit property is illegal and occasioning her loss and damage.

Despite being served with the suit papers, the Defendant did not enter appearance and the matter proceeded for formal proof wherein the Plaintiff testified for herself and called no witness.

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PW1 Renet Runji Njeru adopted her witness statement as part of her evidence. She further testified that she had an allotment letter dated **21st July 1995** in which she was to pay some amount and thereafter she was given a lease. It was her further testimony that she reported the matter to the police. That her allotment letter was confirmed to be genuine vide a letter dated **20th November 2016**, by the Ministry of Lands. It was her testimony that the Defendant entered into her land and constructed a permanent wall. She produced the bundle of documents as exhibit 1 and urged the Court to allow his claim.

The Plaintiff filed written submission which the Court has now carefully read and considered and finds that the issue for determination is ***whether the Plaintiff is entitled to the orders sought.***

Despite being served with the suit papers the Defendant did not file his defence and therefore, the Plaintiffs evidence is uncontroverted. Since

the Plaintiff is the one who has alleged, she had a duty to call sufficient evidence to prove her case on the required standard of balance of probabilities. **Section 107** of the **Evidence Act** places such a duty on he who alleges. It states as follows:-

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Although the Defendant did not file any defence and the Plaintiff evidence remains unchallenged, that does not mean that the court will not interrogate the available evidence to determine whether it has met the required standards. Ex parte evidence is not automatic prove of a case. See the case of **Gichinga Kibutha...Vs...Caroline Nduku (2018) eKLR**, where the Court held that:-

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

The Plaintiff has averred that that she is the owner of the suit property, and to this effect, the Plaintiff has produced in court a letter of allotment dated 21st **July 1995**, that confirms that the Plaintiff was allotted the suit land, Further the Plaintiff has produced a Certificate of Lease confirming that she is the owner of the suit property. Finally, the Plaintiff has also produced in evidence a letter dated **17th November 2011**, from the **Commissioner of Lands** confirming that she is the owner of the suit property.

With the above available evidence and without any evidence to controvert the Plaintiff’s evidence, the Court is satisfied that the Plaintiff is the registered owner of the suit property.

It is evident that **Section 26 of the Land Registration Act**, gives the registered owner of property **absolute** and **indefeasible rights** over the said property. The Plaintiff in this case therefore being the registered owner is therefore the absolute owner over the rights of the said property. Further **Section 24 and 25 of the Land Registration Act** also gives all the rights and privileges over the property to the owner of the property.

The Plaintiff has testified that the Defendant has taken possession of the suit property without her consent. As already held above, the Plaintiff being the registered owner of the suit property is the **absolute** and **indefeasible** owner of the suit property and she is therefore entitled to all the rights and privileges of owning the suit property including the right to take possession of her land. It is the Court’s considered view that the Plaintiff is entitled to the orders sought in her Plaintiff.

Having now carefully read and considered the pleadings and evidence adduced and the written submissions, the Court finds and holds that the Plaintiff has proved her case on the required standard of balance of probabilities. Consequently, the Court enters judgment for the Plaintiff against the Defendant as prayed in the Plaintiff in terms of Prayers No. **(a) (b) (d) and (e)**. In respect of prayer No **(b)** the eviction order to issue after the Plaintiff has given the requisite notice as per the law.

It is so ordered.

Dated, signed and Delivered at Thika this 15th day of June 2020.

L. GACHERU

JUDGE

15/6/2020

Court Assistant

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ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15th March 2020**, this **Judgment** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

By Consent of :

None for the Plaintiff

None for the Defendant

L. GACHERU

JUDGE

15/6/2020