



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ELC CASE NO. 411 OF 2013

ANTHONY WACHIRA GATHIRIMU PLAINTIFF

VERSUS

PETER GIKANDI MWITA DEFENDANT

JUDGMENT

The plaintiff filed this suit on 8th April 2013 seeking the following orders against the defendant:-

- a. *A declaration that the defendant has trespassed on land parcel MUTIRA/KAGUYU/200*
- b. *An order of eviction of defendant from the said land parcel*
- c. *Mesne profit*
- d. *Costs.*

Though served with the plaint on 10th May 2013, the defendant did not enter appearance or file any defence and on 15th October 2013, interlocutory judgment was entered against him and the suit came up for formal proof on 26th June 2014.

The plaintiff testified that he is the registered proprietor of the land parcel

MUTIRA/KAGUYU/200 and produced the title deed (Exhibit 1). He clarified that although the defendant who is his nephew had initially refused to vacate the suit land notwithstanding receipt of a demand to vacate (Exhibit 2), he had since vacated as at the time of hearing. However, he had left behind a structure on the land and the plaintiff therefore seeks an order to demolish the same.

I have considered the plaintiff's evidence, un-controverted as it is, as well as the documentary evidence produced.

It is clear from the title deed (Exhibit 1) that the plaintiff is the registered proprietor of the suit land. The title deed is issued under the **Registered Land Act** (now repealed) and under **Section 28** of the said Act, the plaintiff's right to the suit land is undefeasible and only subject to the rights, interests and other liabilities mentioned therein. There is no evidence before me that the defendant enjoins any of those rights mentioned in **Section 28 of the Registered Land Act**. His presence on the plaintiff's land is therefore that of a trespasser. The plaintiff has however said that the defendant has since moved out of the land. An order of eviction is therefore not necessary. I however declare that the defendant has trespassed on the plaintiff's land and should remove his structures thereon within 30 days of being served with a copy of this judgment and/or decree.

On the issue of mesne profits, there was no evidence led to justify the grant of the same. I

therefore decline to make any orders in that regard.

The plaintiff is entitled to costs.

Ultimately therefore, having considered the evidence before me, I enter judgment for the plaintiff against the defendant in the following terms:-

- a. **A declaration that the defendant has trespassed on land parcel No. MUTIRA/KAGUYU/200**
- b. **As the defendant has voluntarily moved out of the land leaving behind a structure, I further order that he demolishes the said structure within 30 days of being served with the decree herein failing which the plaintiff shall be at liberty to demolish the same.**
- c. **Plaintiff shall have the costs of the suit.**

B.N. OLAO

JUDGE

4TH JULY, 2014

4/7/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Magee for Plaintiff – present

No appearance for Defendant

COURT: Judgment delivered this 4th day of July 2014 in presence of

Mr. Magee for Plaintiff.

Defendant – absent

Right of appeal explained.

B.N. OLAO

JUDGE

4TH JULY, 2014