



IN THE HIGH COURT OF KENYA AT NYERI

ENVIRONMENT & LAND COURT

CIVIL CASE NO.202 OF 2000

MONICA NYAWIRA WAHOME.....PLAINTIFF

VERSUS

VERONICA WAMBUI.....DEFENDANT

J U D G M E N T

The plaintiff is the registered absolute proprietor of all those parcels of land known as ***L.R. No.NYANDARUA/KIANJOGU/BLOCK 1 (MURIRICHUA) 133, 168, 186 and 116***. The plaintiff avers that without her consent or any colour of right, the defendant, her agents and/or servants physically intruded into the said parcels of land sometime in 1998, and have persisted in the illegal occupation ever since. He further avers that the defendant, her agents and or servants have committed or directly perpetrated acts of waste on the said parcels of land by cultivating and building fixtures thereon.

In furtherance of the said occupation and acts of waste, the defendant, her agents and/or servants have destroyed and physically interfered with the plaintiff's fixtures therein, viz, buildings, water pipes and barbed-wire fence. Despite demand made and notice of intention to sue having been given, the defendant, her agents and/or servants have failed, refused or neglected to cease the said occupation, waste and destruction.

In the plaint dated 21/5/2000 she prays for a declaration that the defendant,her agents and/or servants are trespassers on L.R. No. NYANDURUA/KIANJOGU/BLOCK 1(MURIRICHUA)/186, 168, 133 and 116 and an eviction order pursuant thereto. Furthermore an order restraining the defendant, her agents and or servants from committing further acts of waste on the suit premises or destruction of any fixtures thereon. Lastly he prays for Mesne profit,General damages ,Costs of this suit and Interest at court rates.

The defendant filed Memorandum of Appearance and a statement of defence where she avers that the she is the 3rd wife of David Wahome Ndabi while the plaintiff is the second wife and that there is another widow known as Shelmith Wagaki who is the first wife. That the said David Wahome Ndabi died in 1991 being seized of land parcels ***No.Nyandarua/Kianjogu/Block 1(Muririchua)/133, 168, 186 and 116, Mweiga/Munyange/1241, Euaso Nyiro/Suguroi Block VI/6007***.

That prior to her husband's death, he settled her and her children in the Muririchua lands No.133, 168, 186 and 116 while he settled the plaintiff in Mahiga/Manyange/124 which is in Othaya while Shelmith Wagaki was settled in a land at Ol joro rok. That without informing them the plaintiff filed succession proceedings in Nyeri PMCC No.60 of 1992 where she fraudulently deceived the court and got all properties that belonged to their husbands registered in her names. It was not until 1999 that the

defendant learnt of the fraud committed by the plaintiff from the District Officer of Ndaragwa Division but was unable to find in which court the grant was given.

The defendant states that the titles to the suit land were given to the plaintiff by way of fraud, misrepresentation and deception. She was married by the deceased David Wahome Ndabi in 1976. In 1979, the defendant's husband David Wahome Ndabi took her to the suit land where he settled her with their children. She claims to have extensively developed the suit lands by installing pipes, fencing the land, digging thereon and planting trees. The defendant further states that when the land was purchased by her husband, it had a European style house where she dwelt with her husband till his death and thereafter the defendant continues to reside there up to date.

The defendant avers that the plaintiff is registered in the suit land as trustees for her and her children and she has no interest at all in the suit lands as she has her land at Othaya where the deceased settled her.

In the alternative the defendant states that she has acquired interest in the suit land by way of adverse possession as she has continually resided in the suitland for over 12 years since 1979 and therefore the plaintiff's title to the suit land has become extinguished by effluxion of time.

The matter came up for mention on 10/12/2013. Mr. Kariuki appeared for the plaintiff whilst nobody appeared for the defendant despite a mention notice being served. The court gave directions and scheduled the hearing on 11/2/2014. On the scheduled date the advocate for the plaintiff appeared with his client but neither the defendant nor his advocate appeared despite the fact that they were served.

The plaintiff died on 30/11/2005 before the suit could be heard and determined. Ibrahim Wambugu Wahome and Isaac Thuku Wahome applied for letters of administration and received a grant which was confirmed on 23/6/2010. Ibrahim and Isaac Substituted the plaintiff herein.

Ibrahim Wambugu Wahome, a son to the late plaintiff Monica Nyawira Wahome testified that he is a son to Monica Nyawira Wahome and David Wahome Ndabi, both deceased. David died in 1991 and Monica applied for letters of administration in Nyeri PMCC No.60 of 1992. Monica was issued with a certificate of confirmation of grant in respect of David's estate on the 10th day of December, 1996 upon which she inherited, among other properties, the suit lands. Copies of the title deeds in respect of the suit pieces of land known as L.R. No.Nyandarua/Kianjogu/Block.1(Muririchua) 186, 168, 133 and 116 were produced as exhibits 2 to 5. He further testified that during the subsistence of Nyeri PMCC No.60 of 1992, no objections to the confirmation of grant therein were raised. Veronica Wambui was a worker both in Nyahururu and Nyeri. She used to work for Monica Nyawira Wahome and the late David Wahome Ndabi.

One day Monica Nyawira went to the farm in Ndaragua and found it being destroyed and informed the chief who went to the farm and informed Veronica to vacate but she refused. Monica Nyawira was the legal wife of David Wahome. They married in church in October 1976. she prays that the court allows her prayers.

PW2, Isaac Gachau Wambugu testified that he is a brother to Monica Nyawira Wahome, the wife of David Wahome Ndabi. He added that Monica and David solemnized their marriage on the 1976 at PCEA Munyange Church.

When the matter came up for submissions on the 7/4/2014 the plaintiffs counsel was present and relied on the written submissions but the defendant's counsel was absent. The court retired to consider the matters raised.

Having considered the testimony of the plaintiff's witnesses, the documents produced and the submissions by the plaintiff's counsel this court finds that Ibrahim Wambugu Wahome is a son to Monica Nyawira Wahome and David Wahome Ndabi, both deceased. David died in 1991 and Monica applied for letters of administration in Nyeri PMCC No.60 of 1992. She was issued with a certificate of

confirmation of grant in respect of David's estate on the 10th day of December, 1996 upon which she inherited, among other properties, the suit lands. Copies of the title deeds in respect of the suit pieces of land known as L.R. No.Nyandarua/Kianjogu/block.1(Murichua) 186, 168, 133 and 116 were produced as exhibits 2 to 5.

During the subsistence of Nyeri PMCC No.60 of 1992, no objections to the confirmation of grant therein were raised. On this basis, Monica managed to transfer all the assets including the suit land to her name without any objection from any person as per the certificate of confirmation of grant. Thereafter, no application for revocation of the said grant has ever been filed to date. Two years after the confirmation of grant, Monica learnt that Veronica Wambui, the defendant herein, had intruded and/or trespassed on the suit property. She reported the matter to the provincial administration through the Chief at Ndaragua whereupon Veronica Wambui was ordered to vacate the suit property. Veronica Wambui refused to vacate the suit property forcing Monica to file this suit against her. Before this suit could be heard and determined, Monica died on 30/11/2005, Ibrahim Wambugu Wahome and Isaac Thuku Wahome filed succession cause No.492 of 2007 in respect of the estate of Monica Nyawira upon which they were issued with a certificate of confirmation of grant on the 23/6/2010. Ibrahim Wambugu with the consent of his co-administrator took over the conduct of the suit.

Mr Wamugu stated that Veronica Wambui had been employed by Monica and David and that was the only reason that she had been allowed to be on the suit property. Monica and David had solemnized their marriage in 1976 and at no time was Veronica married to David. The certificate of marriage in respect of Monica and David was produced as an exhibit. Monica and David solemnized their marriage on the 23/10/1976 at PCEA Munyange Church, Nyeri County where PW2 attended as one of the invited guests. Among the other invited guests was Veronica Wambui whom PW2 knew as an employee of David Wahome and Monica Nyawira. There was no objection to the solemnization of the marriage either from Veronica Wambui or any other person, before or during the wedding.

Ultimately this court finds that the plaintiff has demonstrated that Monica Nyawira Wahome was the successor of the estate of David Wahome and the legal representative of the said estate having been issued with the Certificate of Confirmation of Grant on the 10th of December 1996 in which she was confirmed as the sole heir of the suit properties. The property of the deceased having been registered in the name of Monica Nyawira Wahome by transmission as proprietor in the place of her deceased husband and a title deed issued on the second day of February, 1998 she became vested with absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto which rights are not liable to be defeated except as provided in the Land Registration Act, 2012 and should be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to such liabilities, rights and interests as affect the same and are declared by section 28 of the Land Registration Act, which do not require noting on the register.

Section 28 of the Act recognizes overriding interests such as spousal rights over matrimonial property and trusts including customary trusts. The Defendant alluded to this rights but never turned up for hearing or submissions and therefore the court finds that the defendant's claim on trust and adverse possession was not proved. Ultimately, I do find that the defendant is a trespasser on the suit parcels of land and do make a declaration that the defendant, her agents and/or servants be evicted from L.R. No.NYANDURUA/KIANJOGU/BLOCK 1(MURIRICHUA)/186, 168, 133 and 116. Prayers for mesne profit for the use of the suit premises and General damages for trespass are not allowed. Costs of this plus interest to the plaintiff. Orders accordingly.

Dated, signed and delivered on 4th day of July 2014.

A. OMBWAYO

JUDGE