



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Environmental & Land Case 585 of 2012**

**EYASU WOLDE GABRIEL.....PLAINTIFF**

**VERSUS**

**ISAAC MUTERU & 9 OTHERS.....PLAINTIFF'S**

**JUDGEMENT**

The Plaintiff herein **EYASU WOLDE GABRIEL** has sued the Defendants herein for several orders :-

- (a) For a declaration that the Defendants have by their acts complained of herein unlawfully encroached and trespassed on the plaintiff's plot **No. LR. NO. 209/6607/7 ( I.R NO. 35958)** Nairobi and thereby committed illegal acts of private nuisance thereon and / or unlawfully converted the same.
- (b) For a **Mandatory Injunction** to compel the Defendants at their own cost by themselves, their agents/ servants/ employees to pull down , dismantle, demolish, or otherwise remove and clear the structures or other developments unlawfully erected and being on the plaintiff plot **LR No. 209/6607/7( I.R NO. 35958)** in Nairobi and cede vacant possession of such part (s) of the said plot as has been encroached upon and alienated vide the said constructions/activities , failing which the plaintiff be at liberty to effect such demolitions and clearance at the Defendants costs.
- (c) For a Permanent injunction to restrain the Defendants by themselves, their agents/servants/employees from trespassing unto, alienating, and / or further converting the plaintiff's. Property in plot **LR. No. 209/6607/7 ( I.R NO. 35958)** in Nairobi or otherwise howsoever interfering with the plaintiff's quiet use and enjoyment thereof .

The Plaintiff stated in his plaint that he is the Registered owner of all that plot of land known as **LR. NO. 209/6607/7** situated at Makadara area of Nairobi County being title No. **IR 35958 effective 22/11/2006** . He further stated that on or about January 2012, the Defendants jointly and severally unilaterally wrongfully and unlawfully entered into and encroached on the suit property, hired off off and divided amongst themselves and variously erected temporary structures thereon. He further stated that the Defendants acts constituted the trespass to his property, forceble entry and inflicted (a) private nuisance. Plaintiff elaborated the particulars of trespass and forceble entry in paragraph 14 of the plaint.

The Plaintiff also stated that the Defendants acts and / or omissions have dispossessed him of his lawfully acquired property , deprived and denied of its use of access to his property and has suffered inter-alia loss of utility of his land; unless restrained by the Court, the Defendants intends to maintain and/ or further their harmful and unlawful acts complained of.

That despite demands made and notices of intention to sue served the Defendants have failed, refused and

/ or neglected to cease / desist from their unlawful and wrongful acts and to undo their illegal acts. The Plaintiff therefore asked the Court to grant the orders sought.

The Defendants though served with the summons did not Enter Appearance nor file Defence. Interlocutory Judgement was entered against them on 31/10/2012 on request by the Plaintiff.

The case proceeded for formal proof on 11/3/2013 wherein the Plaintiff herein ***Eyasu Wode Gabriel***, gave evidence in Court. The Plaintiff told the Court that the land is along Jogoo Road near Uhuru Market. That he bought the ***Land L.R No. 209/6607/7*** from one ***Asumpta Njoki Wanjie*** as per the sale agreement he identified in Court.

The land was registered in his name on 22/2/2006 as per the transfer document ***exhibit No.1***. He produced the title as ***exhibit No. 2*** and the search for the title at the Ministry of lands as Exhibit No. 2 (b). The Plaintiff further in his evidence told the Court that he has paid the Land Rates to the Nairobi City Council as per ***exhibit No.3***.

That the Defendants have encroached on his parcel of land. The Defendants were evicted by the District Commissioner but they later invaded the said land and demolished the fence. The Plaintiff further produced letters from the Director Physical Planning and also Approved Building Plan as exhibit No. 6. That the Defendants have continued to remain on the said land and for that reason the Plaintiff was unable to enter into his land. Plaintiff prayed to Court to declare him the rightful owner of this parcel of land.

I have considered the evidence in totality. From Plaintiff exhibit 1 one ***Asumpta Njoki Wanjie*** transferred land Registration No. 209/6607/7 to ***Eyasu Wolde Gabriel on 15/12/2006***.

The said transfer was registered by the Registrar of Titles on 22/12/2006. From that Registration the Plaintiff became the registered owner of the land Reference ***No. 209/6607/7***. This Transfer is also reflected on exhibit No. 2. There is also evidence that the plaintiff has been paying Land Rates to City Council of Nairobi as exhibited by Plaintiff Exhibit No. 3.

Plaintiff later acquired approval from Nairobi City Council to put up a building on this parcel of land. This is exhibited by Plaintiff Exhibit No. 6. Plaintiff alleged that he cannot proceed with his building project because the Defendants have encroached on his parcel of land. The Defendants did not Enter Appearance nor file their Defence.

The Plaintiff's evidence is not controverted. There is no doubt that plaintiff bought this parcel of land from the original owner Asumpta Njoki Wanjie. The land was transferred to the Plaintiff on 22/12/2006 at a consideration of Kshs. 5,300,000/= as exhibited by Plaintiff's exhibit 2.

The plaintiff therefore is the absolute registered owner of this parcel of land and is entitled to bring this proceedings against the Defendants. This was held in the case of ***Moya Drift Farm Ltd Vs Theuri 1973 E.A page 114*** where the Court of Appeal held ***that "the appellant was the absolute and indefeasible owner of land and was entitled to take proceedings in trespass"***.

Having taken into account that the Plaintiff herein has demonstrated that the land parcel in question was transferred to him on 22/12/2006 and he has continued to pay the Land Rates to City Council of Nairobi and the fact that the Defendants did not dispute his claim, the Court finds that the Plaintiff has been able to prove his case on a balance of probabilities.

***The Court consequently, enters Judgement for the plaintiff against the Defendants as prayed in the Plaint. The Court also awards the costs of this suit to the Plaintiff.***

***It so ordered.***

Signed, dated and delivered this ***2nd day of May, 2013*** at Nairobi.

**L.N. GACHERU**

**JUDGE**

28 days Right of Appeal.

**L N GACHERU**

**JUDGE**

**2/5/2015**

2/5/2013

Before L N Gacheru Judge

Plaintif : Absent

Defendants : Absent.

Court Clerk : Florence

Jaleny for the plaintiff

**Court:**

Judgement read in open Court in the presence of Jaleny for the Plaintiff.

***28 days Right of Appeal.***

**L N . GACHERU**

**JUDGE,**

**2/5/2013.**