



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 286 OF 2015

VICTORIA WAMBUI CHEGE.....PLAINTIFF

=VERSUS=

VERONICA MUKUHI NJOROGE.....DEFENDANT

JUDGEMENT

1. By a plaint dated 31st March 2015, the plaintiff seeks judgment against the defendant for:-

(a) A permanent injunction to restrain the defendant whether by herself or by her servants or agents or any of them or otherwise from trespassing, occupying, utilizing, using, selling, disposing off, proceeding with construction upon the property known as LR No. Kijabe/Kijabe Block 1/12228 or in any other way dealing with the property.

(b) A mandatory injunction do issue against the defendant by compelling her to vacate the property known as LR No. Kijabe/Kijabe Block 1/12228 by inter alia removing the building under construction, removing all debris from the plaintiff's property and restoring the premises to the state it was prior to the unlawful construction.

(c) An order for payment of damages and mesne profits from the losses and harm suffered by the plaintiff.

(d) Such other or further relief that this honourable court may deem fit and just to grant.

(e) Cost of this suit.

2. Upon being served with copies of plaint and summons to enter appearance the defendant entered appearance and filed a statement of defence dated 6th October 2015. She denied each and every allegation set out in the Plaint.

3. By a notice of motion dated 5th December 2018, the plaintiff sought leave to serve the defendant through her advocates on record by registered post at their last known address. The said leave was granted by this honourable court on 20th May 2019.

The defendant was served with a hearing notice of 20th July 2020 through the above means. She neglected to attend court on the hearing date and the matter proceeded ex parte.

4. It is the plaintiff's case that she is the registered owner of land parcel known as Kijabe/Kijabe Block 1/12228. That the defendant is the registered owner of Kijabe/Kijabe Block 1/12229 which is the neighbouring parcel of land. It is her evidence that she was putting up a fence when she discovered that the defendant had constructed her house on part of her land. She reported the matter to the area chief. The defendant was asked to move her house but she refused necessitating the plaintiff to file this suit.

5. The plaintiff further told the court that a surveyor went to the said land and established that the defendant had encroached on the plaintiff's portion. The plaintiff relied on her list of documents dated 31st May 2015 and the supplementary list of documents dated 28th August 2017. They were produced as exhibit P1 – to P13 respectively.

6. The plaintiff's case has not been controverted. The defendant in her statement of defence dated 6th October 2015 denied each and every allegation in the plaint. She did not come to court to challenge the plaintiff's case.

7. I have gone through the surveyor's report produced as exhibit P10. The same is dated 9th March 2017. The findings of the district

surveyor Nakuru, Mr. Benson N. Nyaga, are in paragraph 4 of the said report and are:-

“(a) The physical location of these parcels is consistent with our maps.

(b) The defendant has trespassed on the plaintiff’s land by encroaching into it. She has also put up a permanent building which also encroaches on the plaintiff’s land.

(c) The area of land encroached by the defendant on the plaintiff’s land is approximately 0.019 Ha”

The surveyor visited the sit on 8th March 2017. One Peter W. Kiarie was present as representing the defendant.

8. All in all, I find that the plaintiff has proved her case on a balance of probabilities as against the defendant. She is entitled to the reliefs sought in the plaint. However I note that in prayer c, she seeks damages and mesne profits. The court was not guided on the quantum. It is not in doubt that the defendant encroached on the plaintiff’s portion by constructing a permanent house. I find that she is entitled to damages. I award kshs.50,000 which I think is adequate compensation.

9. Accordingly, judgment is entered for the plaintiff as against the defendant as follows:-

(a) That a permanent injunction is hereby issued restraining the defendant whether by herself or by her servants or agents or any of them, from trespassing, occupying utilizing, using, selling, disposing of, proceeding with construction upon the property known as LR No Kijabe/Kijabe/Block 12228 or in any other way dealing with the property.

(b) That a mandatory injunction is hereby issued against the defendant by compelling her to vacate the property known as LR No. Kijabe/Kijabe Block1/12228 by removing the building, all debris from the plaintiff’s property and restoring the land to the state it was prior to the unlawful construction.

(c) That the plaintiff is awarded Kshs.50,000 general damages for trespass.

(d) That the plaintiff shall have costs of the suit and interest.

It is so ordered.

Dated, signed and delivered in Nairobi on this 8th day of October 2020.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Elkington for the Plaintiff

No appearance for the Defendant

Kajuju - Court Assistant