



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 153 OF 2018

ANGELA TAIYANA WANJUGU.....PLAINTIFF

VERSUS

FRANCIS KIMANI NGUGI.....DEFENDANT

JUDGMENT

The Plaintiff herein vide a Plaint dated **2nd May, 2018** has sought for Judgement against the Defendant for the following orders: -

- a. The Defendant be evicted from the property known as Thika Municipality Block 38/267.**
- b. The structures erected on Plot Thika Municipality Block 38/267 be demolished**
- c. Costs of the suit**

The Plaintiff averred that she is the registered owner of the suit property. That in the year **2016**, she visited the said property and founds structures constructed on the suit property. That she wrote to the Defendant requiring him to demolish the structures, but the Defendant has declined. Further that the Plaintiff established that the construction on the property has not been sanctioned by the Municipal Council of Thika. By reason of the construction erected, the Plaintiff has been denied use of the property.

Despite service of Summons to enter appearance, the Defendant did not enter appearance nor file defence and matter proceeded by way of formal proof wherein the Plaintiff testified for herself and called no witness.

PLAINTIFF'S CASE

PW1 Angela Tiayana Wanjugu adopted her witness statement dated **3rd May 2018** . She further produced her list of documents as Exhibits 1 to 9. She testified that she did not know the Defendant and urged the Court to allow her claim and have the Defendant's structures demolished.

Thereafter, the Court directed the Plaintiff to file Written Submissions which the Court has carefully read and considered and the Court finds as follows:-

The Defendant herein did not enter appearance nor defend the suit. The suit having not been contested, the Plaintiff's evidence remained unchallenged and uncontroverted. However, the Court must still interrogate the evidence adduced because the Plaintiff is the one who has alleged and has an obligation to prove her case on the required standard of balance of probabilities. Exparte evidence is not automatic prove of a case. See the case of **Kenya Power & Lighting Company Limited... Vs...Nathan Karanja Gachoka & another [2016] eKLR**, where the Court stated:-

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.”

Having considered the available evidence, the Court finds the issue for determination is whether the **Plaintiff is entitled to the orders sought**.

The Plaintiff has sought for the eviction of the Defendant from the suit property which she testified belongs to her. The Plaintiff produced a

Copy of Certificate of Lease dated 20th December 2016, evidencing that she is the registered proprietor . **Section 26 (1) of the Land Registration Act of 2012** provides that :-

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except;-

a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or

b. Where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.

The Plaintiff is the registered owner of the suit property and in the absence of any challenge of her proprietorship, it means that she is the absolute and indefeasible owner. The Plaintiff is therefore, entitled to all the rights and privileges that appertain to the use and occupation of the suit property. Section 24 of the Land Registration Act provides;

a)the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

(b)the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

Further **Section 25** provides;

(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

(a)to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b)to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

It is the Plaintiff's testimony that the Defendant has erected structures on her property without any justifiable cause, The Court already held that the evidence by the Plaintiff has **not** been controverted and there is no reason for the Court not to believe that the same is the situation on the grounds.

The Court having held that the Plaintiff is the absolute an indefeasible owner with all the rights and privileges, finds and holds that the Plaintiff is entitled to a quiet, **peaceful enjoyment**, and occupation of the suit property. The same can only be achieved if the orders of eviction against the Defendant are granted.

Therefore, the Court finds and holds that the Plaintiff has proved her case on the required standard of probabilities. Consequently the Court enters Judgement for the Plaintiff against the Defendant herein in terms of Prayers No. **(a) (b) and (c)** of the Plaint dated 3rd May, 2018, as the Plaintiff's claim is found merited entirely.

It is so ordered.

Dated, signed and Delivered at Thika this 17th day of December 2020

L. GACHERU

JUDGE

17/12/2020

Court Assistant – Lucy

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 **Ruling** 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.

With Consent of and virtual appearance via video conference – Microsoft Teams Platform

No appearance for the Plaintiff

No appearance for the Defendant

L. GACHERU

JUDGE

17/12/2020