



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 28 OF 2014

CATHERINE WAMUYU MATHENGE.....PLAINTIFF

=VERSUS=

JOSEPH NJOROGE THAGICHU.....DEFENDANT

JUDGMENT

1. The plaintiff brought this suit through a plaint dated 8/1/2014. She sought the following verbatim orders against the defendant:

(a) An order of injunction restraining the defendant, his servants and/or agents from interfering with, trespassing upon, demolishing, carrying away materials or in any manner whatsoever from dealing with Plot No W 445 in Nyumba Moja Women Group land in Dandora, Nairobi.

(b) An order that the Defendant do give vacant possession of Plot No W 445 Nyumba Moja Women Group Dandora to the Plaintiff and in default thereof be evicted therefrom.

(c) Damages for trespass.

(d) Costs of this suit.

2. Her case was that she was the owner/allottee of Plot No. W.445 (**the suit property**) from Nyumba Moja Women's Group within Dandora Area in Nairobi since 1995. In the month of August, 2013, she commenced development of the suit property. On 8/11/2013, the defendant who was a stranger to her went to the suit property claiming that it belonged to him. On 9/11/2013, the defendant, in the company of hired thugs and goons, descended on the suit property, demolished the plaintiff's structures and carted away the plaintiff's construction materials and equipment from the suit property. The defendant thereafter commenced construction on the suit property. Aggrieved, she brought this suit seeking the above orders.

3. The defendant entered appearance through the Firm of M P Mwangi & Company Advocates vide a Memorandum of Appearance dated 19/2/2014. He did not, however, file a defence. Consequently, the suit was heard as an undefended cause on 22/9/2020.

4. At the hearing, the plaintiff testified as PW1. She adopted her witness statement dated 8/1/2014 in which she stated her case as summarized above. She produced the following six (6) documents: (i) Letter of Allotment of Plot No W 445 by Nyumba Moja Women Group to the Plaintiff; (ii) Beacon Certificate for Plot No W 455 to Catherine Wamuyu Mathenge from Nairobi City Council dated 26/11/1996; (iii) Extract of the Register of members of Nyumba Moja Women Group; (iv) Letter of Allotment of Plot W 1360 to Joseph Njoroge Thagichu by Nyumba Moja Women Group; (v) Pictures/Photographs of destruction on Plot No W445 by the defendant and his workers and the materials put up on the plot by the plaintiff; and (vi) Receipts of materials purchased by the plaintiff and put on the plot. Subsequently, her advocate filed written submission dated 1/10/20 in which he reiterated the plaintiff's case and urged the court to grant the prayers sought in the plaint.

5. I have considered the pleadings, evidence and submissions before court. This suit is undefended. There is no evidence relating to the survey and registration status of the suit property. In the absence of any defence and/or controverting evidence, the court is satisfied that the plaintiff has proved her case on a balance of probabilities in so far as beneficial ownership of the suit property is concerned.

6. Counsel for the plaintiff urged the court to award her special damages of Kshs 47,340 based on the receipts which she produced. Regrettably, the plea for special damages in the sum of Kshs. 47,340 was neither pleaded nor prayed for. It cannot therefore be granted on the basis of the receipts, without the requisite pleadings.

7. With regard to the plea for damages for trespass, the defendant led evidence to indicate trespass. She did not, however, lead any evidence or make submissions relating to general damages for trespass. In the circumstances, the court will award her nominal damages assessed at Kshs 1,000,000. This figure takes into account the period of trespass which is from 9/11/2013 to date.

8. In light of the foregoing, the court makes the following disposal orders in the suit.

(a) An order of permanent injunction is hereby issued restraining the defendant together with his agents/servants from interfering with, trespassing upon, or in any manner whatsoever dealing with Plot No. W.445 in Nyumba Moja Women Group Land in Dandora, Nairobi.

(b) The defendant shall give vacant possession of the said property within 30 days from the date of service of the notice of entry of judgment herein. In default, peaceful eviction shall be effected under the supervision of the Area Officer Commanding Police Station upon confirming prior service of the notice of entry of judgment herein on the defendant.

(c) The plaintiff is awarded nominal damages for trespass in the sum of Kshs 1,000,000 against the defendant.

(d) The defendant shall bear costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 15TH DAY OF DECEMBER 2020.

B M EBOSO

JUDGE

In the Presence of: -

Mr Keyonzo for the plaintiff

Court Clerk – June