



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 186 OF 2016**

**JANE WAINOI KINYUA.....PLAINTIFF**

**VERSUS**

**ZAKAYO MWANGI KAMENYA.....DEFENDANT**

**JUDGMENT**

The plaintiff in a plaint dated 11<sup>th</sup> November 2016 sought the following orders:

- 1. A permanent injunction against the defendant, his servants, and/or agents from interfering with land parcel No. MUTIRA/KAGUYU/5671.***
- 2. Eviction from suit property No. MUTIRA/KAGUYU/5671 and O.C.S Commanding Kerugoya Police Station to provide security.***
- 3. Costs of the suit.***
- 4. Any other relief the Court deems fit and proper to grant.***

The plaintiff averred in the suit papers that she is a beneficiary of the Estate of one ZAKAYO MUREITHI MUNGE (Deceased) and that after his demise, they filed Succession Cause No. 349 of 2012 where the land parcel No. MUTIRA/KAGUYU/305 was sub-divided as follows:

- (1) Lucy Kariuki Njiraini - 1/3 share
- (2) Jane Wainoi Kinyua - 1/3 share
- (3) Margaret Karima and
- (4) Jane Karugu - 1/3 share

The plaintiff further averred that after registration of the new numbers, each person was registered and shown their own portions. She was registered in parcel No. MUTIRA/KAGUYU/5671. Despite several requests the defendant has refused to vacate from the land. In a defence dated 8<sup>th</sup> December 2016, the defendant denied the plaintiff's claim and put her to strict proof. The defendant further averred that the pleadings are as a result of Succession Cause No. 349 of 2012 at Kerugoya which has a pending Appeal No. 3 of 2016 at Nyeri where the subject estate being L.R. No. MUTIRA/KAGUYU/305 is pending determination. The defendant sought to have the suit dismissed with costs.

**PLAINTIFF'S CASE**

When the case came up for hearing on 13<sup>th</sup> December 2018, Mr. Macharia for the plaintiff was present while Mr. Chomba was holding brief for Mr. Nganga for the defendant. The matter was confirmed for hearing at 2.00 p.m. At 2.40 p.m. the matter was called out and only Mr. Macharia for the plaintiff was present. The defendant and his advocate were absent. The matter proceeded Ex-parte. In her evidence, the plaintiff gave sworn testimony and stated that the defendant is the son to her brother-in-law. She stated that the suit property is a portion of land she acquired from her father-in-law (deceased) through transmission after they filed Succession Cause No. 349 of 2012. After the land was sub-divided, each of the beneficiaries were shown their respective portions. The defendant has refused to vacate from the portion and wants the Court to issue eviction order compelling the defendant to be removed from the suit property. She adopted her statement dated and filed on 11<sup>th</sup> November 2016. She also produced the documents shown in her list of documents as Plaintiff's Exhibits 1, 2, 3, 4 and 5

respectively. The documents are as follows:

- (1) Certificate of confirmation of a grant issued on 29<sup>th</sup> June 2015.
- (2) A Court order issued on 23<sup>rd</sup> June 2015
- (3) A copy of title deed for land parcel No. MUTIRA/KAGUYU/5671.
- (4) Certificate of official search for land parcel No. MUTIRA/KAGUYU/5671 and
- (5) Copy of judgment in Succession Cause No. 349 of 2012 (Kerugoya).

#### DECISION

The plaintiff's claim is for eviction of the defendant from the suit property L.R No. MUTIRA/KAGUYU/5671 measuring approximately 0.62 Ha. The documents produced in evidence shows that she is the registered proprietor of the suit land. The same documents also show that the suit property was acquired by the plaintiff through transmission as a result of a Succession Cause No. 349 of 2012 (Kerugoya). The proceedings of the said succession cause and the judgment was produced in evidence. The evidence shows that the suit property was acquired by the plaintiff lawfully and procedurally. The defendant filed defence to the plaintiff's claim but is not alleging any fraud or illegality in the acquisition of the suit property. The defendant through his advocates on record attended Court during the hearing of this case but did not call the defendant or any witness to rebut the plaintiff's testimony. In the absence of any evidence to the contrary, the plaintiff's testimony given on oath remains unchallenged.

*Section 25 of the Land Registration Act* provides as follows:

***“25 (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 lease, 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 which the person is subject to as a trustee.***

The defendant has not challenged the plaintiff's proprietorship in his defence. I am satisfied that the plaintiff has proved her claim against the defendant on the required standards. I therefore grant the orders sought in the plaint. The defendant shall also bear the costs of this suit.

***READ and SIGNED in open Court at Kerugoya this 25<sup>th</sup> day of January 2019.***

**E.C. CHERONO**

**ELC JUDGE**

**25<sup>TH</sup> JANUARY, 2019**

*In the presence of:*

Mr. Macharia for the Plaintiff present

Defendant/Advocate – absent

Mbogo Court clerk - present.