



**Nyambura v Kimotho (Civil Case E182 of 2021)
[2024] KEMC 86 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEMC 86 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL CASE E182 OF 2021
PA NDEGE, SPM
JULY 25, 2024**

BETWEEN

IRINE NYAMBURA PLAINTIFF

AND

FRANCIS MAINA KIMOTHO DEFENDANT

JUDGMENT

1. Via a plaint dated 21.10.2021, the plaintiff herein, Irene Nyambura, prays for judgment against the defendant for:
 - a. A declaration that the suit property herein belongs to her.
 - b. An order for the cancellation of the title that was issued to the defendant, Francis Maina Kimotho, in respect of the suit property.
 - c. A directive to be issued to the land registrar for issuance of a new title of the suit property in favour of the plaintiff.
 - d. A permanent injunction be issued against the defendant to restrain him and his agents from harassing the plaintiff and trespassing the suit property.
 - e. Costs of the suit.
 - f. Any further reliefs the court deems fit to grant.
2. It is the plaintiff's case that the defendant herein is her stepson. That on or about December 2006, the plaintiff and her husband John Kimotho Karumba, now deceased, acquired the suit property herein title number Kiambogo/ Kiambogo Block 2 Mwariki at Mwariki within Nakuru county. That they then started to develop the same by building their matrimonial home slowly until 2012 when they moved to the suit property. That all material times relevant to the case, the plaintiff was living in her



matrimonial home as a second wife to her deceased husband and was never interrupted in the said suit property. That when her husband became sick in 2009, the plaintiff took care of him at their matrimonial home until his demise in 2019. That she was later surprised that the suit property in which she was living in was not hers whereupon she was told to sign a 1 weeks' notice to vacate. That the defendant herein alleges that the suit property had a debt which he paid and therefore the property was transferred to him. That she has been living on the suit property from 2012 to date and she was never informed by her late husband of any debt neither has any person claimed interest in the said property. That the defendant continues to frustrate her wanting to evict her from her matrimonial property without any legal ground and that she therefore lives in fear and is afraid of what will become of her children if anything was to happen to her.

3. The defendant filed his statement of defense and counterclaim dated 25.01.2024 wherein he pleaded that the plaintiff is not and has never been a wife to the previous owner of the parcel of land. That the plaintiff is a trespasser on his land and is attempting to disposes him the said parcel. That in order for the plaintiff to achieve her malicious target of dispossessing him the land, she even obtained registration of a national identity card by false pretenses where she has been charged in Nakuru Vide Criminal Case No. 1280 Of 2022 Republic versus Pauline Muthoni Njoroge. That the identity of the plaintiff is therefore questionable as she appears hellbent to ensure she disposes the defendant of his land. He prays that the plaintiff's suit be dismissed and on the other hand judgment be entered against the plaintiff as per the counterclaim for:
 - a. An order of eviction against the plaintiff for parcel of land known as Kiambogo/Kiambogo Block 2/11732(Mwariki) be issued and demolition of any structure erected therein by the plaintiff.
 - b. The OCS Mwariki police station to supervise the enforcement of the order above.
 - c. An order of permanent injunction be issued restraining the plaintiff from entering, occupying, remaining or trespassing on and/ or in any way interfering with the defendant's occupation of all that parcel of Land known as Kiambogo/KiambogoBlock 2/11732(Mwariki).
 - d. Mense profit for trespass.
 - e. Cost of the suit.
4. During the hearing, the plaintiff testified as the sole witness in her case (PW1). She was put to task to produce any evidence of the marriage and/ or any children born between her and the said deceased, but did not avail any. The court noted her demeanor in avoiding answering questions and clearly attempting to mislead the court as to her marriage to the deceased and/or getting children with him. She however confirmed that the suit parcel is registered in the name of the defendant and the said transfer was done by the deceased prior to his death. She therefore had no evidence of any foul play and/or fraud that would warrant the cancellation of the title she equally confirmed that she had been charged in Nakuru criminal case number E1280 of 2022 for obtaining registration of national identity card by false pretense as well where the particulars are that she has been pretending to be known as Irene Nyambura Kimotho while her real identity is Pauline Muthoni Njoroge. On the basis of this evidence alone, I do find that the plaintiff herein failed to prove that the suit parcel herein is hers by virtue of it being a matrimonial property and, on that basis, alone, her suit is hereby dismissed with costs to the defendant.
5. The defendant himself testified as DW4 and backed his claim with evidence that the land parcel herein was transferred to him by his late father, the previous owner, even before the father passed away. The father is the alleged husband to the plaintiff, allegations which the court has already dismissed. He has



produced the title deed which is in his name. I find no proof of any fraud and I do hereby agree with the written submissions by the defendant counsel. He is the undisputed owner of the parcel and I do hereby allow his counterclaim.

6. I do therefore enter judgement against the plaintiff as per the counterclaim as follows:
- a) An order of eviction against the plaintiff from the parcel of land known as Kiambogo/ Kiambogo Block 2/11732 (Mwariki) upon expiry of 90 days from the date hereof be and is hereby issued and upon expiry of 90 days, force may be used and any structure erected therein by the plaintiff be demolished.
 - b) The OCS Mwariki police station to supervise the enforcement of the order above.
 - c) An order of permanent injunction be issued, upon the expiry of 90 days restraining the plaintiff from entering, occupying, remaining on, trespassing on and/ or in any way interfering with the defendant's occupation of all the parcel of land known as Kiambogo/Kiambogo Block 2/11732(Mwariki).
 - d) Costs of the suit and the counterclaim awarded to the defendant.
7. On the claim for mense profit, I find that the same is a genre of special damages which must be proved. (see Njenga Versus Kinuthia & Another {2022} KEELC 3249(KLR). There was no such proof herein and I do hereby dismiss the claim for mense profit.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 25TH DAY OF JULY 2024.

HON A.P. NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of:

No appearance for plaintiff

Ndichu present for defendant.

Plaintiff absent

Defendant

HON A.P. NDEGE

SENIOR PRINCIPAL MAGISTRATE

