



**REPUBLIC OF KENYA**

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

**CASE No. 219 OF 2014**

**PATRICK MAINA MATHENGE..... PLAINTIFF**

**VERSUS**

**JOHN WANJAU..... 1<sup>ST</sup> DEFENDANT**

**STANLEY KIPRONO KWAMBAL.....2<sup>ND</sup> DEFENDANT**

**COUNTY GOVERNMENT OF NAKURU – GILGIL**

**SUB-COUNTY.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. By plaint filed on 25<sup>th</sup> July 2014, the plaintiff averred that he is the owner of a parcel of land known as “Plot No. 12 – residential 5KA Gilgil registered in the name of Jane Chepkosgei which he legitimately purchased from Mr Tanui.” He further averred that the 1<sup>st</sup> and 2<sup>nd</sup> defendants trespassed on the plot while the 3<sup>rd</sup> defendant failed to resolve the dispute between the parties.

2. The plaintiff therefore sought judgment against the defendants as follows:

*a) An eviction and a demolition order be issued against the 1<sup>st</sup> and 2<sup>nd</sup> defendant (sic) to remove them, their agents, their servants and other related workers and to demolish all such buildings, fences and structures erected by the defendants (sic) Plot No. 12 – residential 5KA Gilgil and permanent injunction restraining the defendant (sic) by themselves, agents and or servants from selling, demolishing any fence, disposing and transferring or in any manner of whatsoever the nature dealings with (sic) Plot No. 12 – residential 5KA Gilgil.*

*b) Costs of this case be borne by the defendants.*

3. Despite being served with Summons to Enter Appearance, the 1<sup>st</sup> and 2<sup>nd</sup> defendants neither entered appearance nor filed defence. They did not participate in the hearing either. On its part, the 3<sup>rd</sup> defendant filed a defence in which it generally denied the allegations made by the plaintiff and stated that according to its records, the suit property is in the names of Jane Chepkosgei and that no transfer or application to transfer to any other person has been made to it. In conclusion, it urged that the case against it be dismissed with costs.

4. At the hearing, the plaintiff testified as PW1. He stated that the 1<sup>st</sup> defendant is his neighbour and that he knows him. He also knows the 2<sup>nd</sup> defendant. He added that the 2<sup>nd</sup> defendant is occupying his (plaintiff’s) plot No. 12 – residential 5KA Gilgil. Sometime back, he was informed by clerk to Nakuru County Council that there was a plot on sale which belonged to his wife one Jane Chepkosgei. He purchased it on 22<sup>nd</sup> November 2002 through a handwritten agreement dated that date (PExb 1). Ms Chepkosgei handed to him an allotment letter signed by acting clerk of County Council of Nakuru (PExb 2). The plaintiff took possession immediately, fenced the plot and started farming. However, in the year 2003 the 1<sup>st</sup> defendant went to the plot and demolished the fence and destroyed the plaintiff’s crops. The 1<sup>st</sup> defendant claimed that the plot had been sold to him by someone else.

5. The plaintiff wrote a complaint letter dated 3<sup>rd</sup> March 2004 (PExb 3) to the County Council of Nakuru. In the letter, he explained that he bought the plot from one Mr Tanui some two years prior to the date of the letter. Before then, Tanui had resolved an ownership dispute between himself and a Mr Ogolla with the result that Ogolla admitted that the plot belonged to Tanui. Since Ogolla had sold the plot to the 1<sup>st</sup> defendant, Ogolla agreed to look for an alternative plot for the 1<sup>st</sup> defendant. The council responded by summoning the plaintiff, the 1<sup>st</sup> defendant, Ogolla, Tanui and Chepkosgei through several letters (PExb 4) to attend various meetings. Ogolla wrote a letter dated 30<sup>th</sup> April 2004 to the County Council (PExb 5) stating that the 1<sup>st</sup> defendant had been given an alternative plot being plot No. 40 at Gilgil Kambi Somali. Subsequently, the County Council wrote to 1<sup>st</sup> defendant on 31<sup>st</sup> May 2005 (PExb 6A) asking him to vacate. Since he did not

comply, another letter was written to him on 21<sup>st</sup> February 2006 (PExb 6B). He still did not comply.

6. The plaintiff further stated that later in the year 2014, the 2<sup>nd</sup> defendant arrived and deposited construction material on the plot. Once again, the plaintiff raised a complaint with the county council. Subsequently, the county council issued a letter (PExb 7) stating that the plot belonged to Jane Chepkosgei. The County Council did not evict the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Owing to the dispute, the pay rates. He had also lodged documents for the plot to be transferred to him but he was told to wait for the dispute to be determined before transfer could be effected.

7. Under cross-examination by counsel for the 3<sup>rd</sup> defendant, the plaintiff stated that he seeks no orders against the 3<sup>rd</sup> defendant since it has not wronged him. The 3<sup>rd</sup> defendant resolved all disputes in his favour. He only joined the 3<sup>rd</sup> defendant so that it could come to court and clarify if the property belongs to him.

8. The plaintiff's case was closed at that point. The 3<sup>rd</sup> defendant also closed its case without tendering any evidence. Parties were then ordered to file and exchange written submissions. The order was duly served upon the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The plaintiff filed submissions on 22<sup>nd</sup> March 2018 while the 3<sup>rd</sup> defendant filed submissions on 18<sup>th</sup> May 2018. The 1<sup>st</sup> and 2<sup>nd</sup> defendants did not file any submissions. The plaintiff argued that he had proven his case. He urged the court to grant him the orders sought. The 3<sup>rd</sup> defendant argued that no case had been established against it and urged the court to dismiss the claim against it with costs.

9. I have carefully considered the pleadings, the evidence and the submissions in this matter. Three issues emerge for determination; firstly, whether the plaintiff has established an interest over the suit property; secondly, whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants trespassed onto the suit property and finally, whether the plaintiff is entitled to the relief sought.

10. The plaintiff's case against the 1<sup>st</sup> and 2<sup>nd</sup> defendants is unchallenged. From the material placed before the court, it is apparent that pursuant to letter issued following a meeting of the Nakuru County Council District Plots Allocation Committee held on 10<sup>th</sup> June 1997, the suit property was allocated to Jane Chepkosgei. Her ownership was later confirmed by the 3<sup>rd</sup> defendant though its letter dated 30<sup>th</sup> June 2014. She later sold the plot to the plaintiff on 22<sup>nd</sup> November 2002 as is witnessed by the hand written sale agreement of that date. The plaintiff has satisfactorily explained that transfer in his favour has not been registered with the 3<sup>rd</sup> defendant owing to the intervening disputes. I am therefore satisfied that the plaintiff has established sufficient proprietary interest over the suit property.

11. The second issue for determination is whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants trespassed onto the suit property. The plaintiff gave uncontroverted evidence that the 1<sup>st</sup> defendant went to the suit property in the year 2003, demolished the fence and destroyed the plaintiff's crops. Further that the 2<sup>nd</sup> defendant deposited construction material on the suit property in the year 2014 and that the 2<sup>nd</sup> defendant was still occupying the property as at the date of the hearing. All this is corroborated by the 3<sup>rd</sup> defendant's letters dated 31<sup>st</sup> May 2005, 21<sup>st</sup> February 2006 and 30<sup>th</sup> June 2014. I therefore find and hold that the 1<sup>st</sup> and 2<sup>nd</sup> defendants trespassed onto the suit property.

12. The reliefs sought are adumbrated at the paragraph of this judgment. In view of the foregoing, I am satisfied that the plaintiff has proven his case as against the 1<sup>st</sup> and 2<sup>nd</sup> defendants on a balance of probabilities. As regards the 3<sup>rd</sup> defendant, the plaintiff himself testified that he seeks no relief against it. Although he explained that he joined the 3<sup>rd</sup> defendant so that it could come to court and clarify that the property belongs to him, no explanation has been offered as to why that effect could not be achieved by summoning a witness from the 3<sup>rd</sup> defendant to testify.

13. In the end, I make the following orders:

- a) The plaintiff's case against the 3<sup>rd</sup> defendant is dismissed with costs to the 3<sup>rd</sup> defendant.
- b) I order the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents and servants to vacate and to demolish all buildings, fences and structures erected by them on Plot No. 12 – residential 5KA Gilgil within thirty (30) days from the date of delivery of this judgment.
- c) In default, the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents and servants be evicted from Plot No. 12 – residential 5KA Gilgil and all buildings, fences and structures erected by them on Plot No. 12 – residential 5KA Gilgil be demolished. The eviction and demolition to be done in accordance with the provisions of section 152G (1) (d) to (h) of the Land Act, 2012.
- d) A permanent injunction is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants by themselves, their agents and or servants from selling, disposing and transferring or in any manner whatsoever interfering with Plot No. 12 – residential 5KA Gilgil save as ordered under (b) above.
- e) The plaintiff is awarded costs of this suit as against the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

14. This judgment was initially scheduled for delivery on 24<sup>th</sup> January 2019. Delay in its delivery, which was occasioned by the fact that I proceeded on medical leave, is regretted.

**Dated, signed and delivered in open court at Nakuru this 30<sup>th</sup> day of April 2019.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Counsel for the plaintiff absent

Plaintiff present in person

No appearance for the 1<sup>st</sup> defendant

No appearance for the 2<sup>nd</sup> defendant

No appearance for the 3<sup>rd</sup> defendant

Court Assistants: Beatrice & Lotkomoi