



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 253 OF 2013

LEONIDA L. LYOSHI OWEGI (suing as personal representative of

Estate of LUCIA LYOSHI SAYISI (DECEASED).....PLAINTIFF

VERSUS

LUCY LUKHONZO ODHIAMBO

MAURICE LUGONZO

MARY LUGONZO.....DEFENDANTS

JUDGEMENT

By an amended plaint dated 16th February 2018 the plaintiff avers that she is the administratrix and or the beneficial owner of the parcel of land designated as land parcel No. Butso/So/Shibeye/676 containing by measurement approximately 14.5 acres and all the developments built thereon and is entitled to diligently administer it. The defendants have illegally, wrongfully, forcefully and without any color of right, consent and or authority trespassed onto the suit property herein and have taken and or retained possession thereof illegally, unlawfully, irregularly and unprocedurally commenced farming and or cultivating crops thereon and irregularly, unlawfully and illegally inhabited the deceased's house without consent or authority of the plaintiff as the administratrix of the estate of the deceased. The defendants proceeded to bury their father, the late Stephen Lugonzo, on the suit premises on. By reason of the defendants' acts of trespass, the deceased's estate has and continues to suffer immense and immeasurable inconveniences, loss and damage and the suit property herein stands to be defaced and devalued to the detriment of the plaintiff. The plaintiff's has on numerous occasions requested and or pleaded with the defendants to cease trespassing or carrying any works on land parcel No. Butso/So/Shibeye/676 and the developments thereon and or vacate therefrom and even sought the intervention of the local provincial administration but the defendants have adamantly refused, neglected and or failed to comply and persist in their trespass hereby necessitating this suit. The plaintiff further avers that the defendants have threatened and intend, unless restrained by this honourable court, to continue or remain in illegal, wrongful, unlawful and forceful occupation and or trespass thereby necessitating this suit. The plaintiff's claims are as follows:-

(a) This honourable court does order and or declare that the plaintiff being the administratrix and or the beneficial owner of the land parcel number L.R. BUTSOTSO/SHIBEYE/676 and all the developments thereon, is entitled to exclusive, peaceful, quiet and unimpeded possession and use thereof and to issue an order that the defendants, their agents, relatives, employees and or any one acting under or through them be evicted from the said parcel of land forthwith.

(b) This honourable court be pleased to issue a mandatory injunction directing the defendants to have the remains of Stephen Lugonzo exhumed from the suit land L.R. Number BUTSOTSO/SHIBEYE/676 and reburied elsewhere.

(c) This honourable court be pleased to issue a permanent injunction perpetually restraining the defendants either by themselves or through their relatives, employees and or agents from laying claim to or trespassing onto, utilizing, developing, carrying out any works on, constructing and or in any manner interfering with the estate of the deceased herein comprising land parcel L.R. BUTSOTSO/SHIBEYE/676 and all the developments thereon and the plaintiff be allowed to peacefully, diligently and properly administer the estate of the deceased herein.

(d) The defendants vacate the suit property immediately in default of which an order of eviction be issued against the defendants.

(e) General damages for trespass.

(f) Mesne profits from the date of filing this suit (4th September, 2013).

(g) The costs of this suit and interest thereon.

(h) Any other or further reliefs deemed fit and just.

PW1 testified that the suit land belonged to her sister who died in 2012 and willed it to her. She obtained the confirmation of grant and transferred it to herself. The said sister was married to the defendants' father Stephen Lugonzo who later also passed away and they were both buried on the suit land. The defendants lived in Mbale but moved there in 2012 after her sister passed on. Her sister never had any children. She however states that the land was then registered in her sons name in 2013. Her sister bought the land in 1969 and was registered in 1988. She got married to the said Stephen Lugonzo in 1981. PW2 stated that he was a witness when the late Lucia bought the suit land. She got married to the late Stephen Lugonzo and they lived on the said land. PW3, confirms that his father sold the suit land to the late Lucia

The defendants state that if indeed the plaintiff is the administratrix of the estate of the deceased Lucia Lyoshi Sayisi, then the said grant of probate was obtained through forgery, fraud and trickery and the defendants will challenge and object to it in the right forum. The defendants aver that even if they buried the deceased Stephen Lugonzo on the suit land, their action was justified as that was the matrimonial home for the deceased. DW1 the 2nd defendant testified that the late Lucia got married to his father in 1991. Subsequently both died and were buried on the suit land. The plaintiff filed succession and they objected to the same. He produced the objection proceedings as DEX 5. His biological mother died in 1962. The 1st and 2nd defendants are his sisters. The defendant submitted that the plaintiff has no status quo to bring this suit as the suit land is registered in the name of her son Hillary Owegi. No authority was produced to show that she had authority to do so. The other preliminary issue raised in their submissions is that this court has no jurisdiction to entertain the matter as the same is a succession matter.

This court has considered the evidence and submissions herein. Before going into the merits and demerits of the case, the preliminary issue to be determined is whether this court has jurisdiction and whether or not the plaintiff has the locus standi. On the issue of jurisdiction of this court, Article 162(2)(b) and 165(3)(a) of the Constitution of Kenya 2010 and Section 13 of the Environment and Land Court Act, 2011 the jurisdiction of the Environment and Land Court is to determination of disputes relating to environment planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, evaluations, mining, minerals and other natural resources, compulsory acquisition of land, land administration and management, public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land and any other dispute relating to environment and land. I wish to refer to the case of John Kimani Njenga v Margaret Wanjiru Kanyiri & others ELC No. 345 Of 2014 where it was held that the ELC Court had jurisdiction to hear and determine disputes, actions and proceedings concerning land. Indeed section 105 of the Land Act provides as follows;

“The Environment and land Court established under the Environment and land Court Act is vested with the exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act”.

The plaintiff's case is ownership of suit land L.R. Number BUTSOTSO/SHIBEYE/676. I find that this court has jurisdiction to entertain this matter. On the issue of locus standi. By an amended plaint dated 16th February 2018 the plaintiff avers that she is the administratrix and or the beneficial owner of the parcel of land designated as land parcel No. Butsotso/Shibeye/676 containing by measurement approximately 14.5 acres and all the developments built thereon and is entitled to diligently administer it. That the defendants have illegally, wrongfully, forcefully and without any color of right, consent and or authority trespassed onto the suit property herein. During her testimony the plaintiff states that the land was transferred to her son in 2013 and belongs to him. There is no authority produced to show she is suing in a representative capacity or if the son was a minor then as guardian. We seem to be talking about land which belongs to a third party. No current search or title was produced to prove ownership of the suit property. The official search produced is dated 30th May 2012 in the name of the deceased Lucia Lyoshi Sayisi. I find that the plaintiff has no locus to bring this suit as drafted. I therefore strike it out with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9TH DAY OF APRIL 2019.

N.A. MATHEKA

JUDGE