



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 191 OF 2017

PHILISTA PRUDENCE MINJA ONYANGO.....PLAINTIFF

VERSUS

FLORENCE SHEILLA MUTHONIDEFENDANT

JUDGMENT

1. In the Complaint dated 26th April, 2017, the Plaintiff averred that she is the registered proprietor of a parcel of land known as Mavoko Town Block 12/130 measuring approximately 2.00 Ha (*the suit land*); that she purchased the suit land by way of shares from one Kioko Mweu who was a member of Drumvale Farmers Co-operative Society Ltd and that she took possession of the suit land in 1994.
2. According to the Plaintiff, on 20th April, 2017, the Defendant trespassed on the suit property and pulled down a portion of her fence, destroyed her house and cut down mature mango trees. The Plaintiff is seeking for a declaration that he is the sole owner of the suit land, an order of permanent injunction restraining the Defendant from trespassing on the suit land and for damages.
3. Although the Defendant was served with Summons to Enter Appearance and Complaint, he neither entered appearance nor filed a Defence. The matter proceeded for formal proof on 25th October, 2018.
4. The Plaintiff, PW1, informed the court that she purchased four (4) shares from one Kioko Mweu on 29th July, 1992. It was the evidence of PW1 that after the purchase of the said shares, she became a member of Drumvale Farmers Co-operative Society Limited and was duly issued with a Share Certificate No. 3712.
5. PW1 informed the court that on 2nd April, 1993, he applied for a five (5) acres plot and was allocated by the Society the suit land. According to PW1, she took possession of the land in 1994 and was later on registered as the proprietor of the same.
6. The evidence of PW1 was that after taking possession of the land, he constructed a house and a dam on the land and planted mangoes and bananas. However, without any justifiable cause, the Defendant trespassed on the suit land on 20th April, 2017, fenced off a portion of the suit land and uprooted mango trees.
7. PW1 informed the court that the Defendant's actions of damaging the properties on the suit land were reported to Kamulu Police Station. It was the evidence of PW1 that she continues to suffer loss and damage due to the said acts of trespass of the Defendant.
8. PW2 informed the court that he is an Administration Police Officer based at Makongeni AP Post and

that on 19th April, 2017, one Omondi reported to their office about some strangers having invaded the suit land and destroyed the vegetation. It was the evidence of PW2 that they accompanied the complainant and on reaching the suit land, they found a group of people cutting down trees. They advised the said group of people to stop the cutting down of trees on the suit land. The version of PW2 was supported by his colleague, PW3.

9. The Plaintiff's advocate filed his submissions in which he reiterated the evidence of PW1, PW2 and PW3, which I have already summarized above.

10. The Plaintiff's assertion that she is the registered proprietor of parcel of land known as Mavoko Town Block 12/130 measuring approximately 2.00 Ha has not been controverted. Indeed, the Plaintiff produced in evidence a copy of the share certificate from Drumvale Farmers Co-operative Society Limited showing that he was a member of the Society; the copy of the Title Deed for Mavoko Town Block 12/130 which was issued to him on 15th November, 1996 and the copies of the photographs showing the damage that was occasioned by the Defendant.

11. In view of the uncontroverted evidence before me, I find and hold that the Plaintiff has proved on a balance of probabilities that she is the registered proprietor of the suit land. The Plaintiff has also proved that the Defendant trespassed on the suit land and fenced a portion of it. However, no evidence was tendered to show the extend of the damage that was occasioned by the Defendant's actions.

12. For those reasons, I allow the Plaintiff's Plaint dated 26th April, 2017 as follows:

a. A declaration be and is hereby issued that the Plaintiff is the sole owner of all that parcel of land being Title No. Mavoko Town Block 12/130.

b. An order of permanent injunction be and is hereby issued restraining the Defendant by herself, her servant, agent and or whomsoever in any means howsoever from continuing encroaching, trespassing, invading, up-rooting mangoes, fencing, placing new beacons, alienating and/or disposing off and in any other way interfering with the parcel of land being Title No. Mavoko Town Block 12/130.

c. An order be and is hereby issued that the Defendant be forcefully evicted from Title No. Mavoko Town Block 12/130 and demolition of any structure therein at the Defendant's cost.

d. The Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 24TH DAY OF MAY, 2019.

O.A. ANGOTE

JUDGE