



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO.689 OF 2012**

**TERESIAH NYAMBURA KARERA.....PLAINTIFF**

**VERSUS**

**PAULINE NYAGUTHIE MUTAHL.....DEFENDANT**

**JUDGEMENT**

1. The Plaintiff sued the Defendant over land reference number 27627/54 situated in Utawala area, in Nairobi (“the Suit Property”) claiming that the Defendant had trespassed onto this plot in September 2010, fenced it and began construction on it in 2012. The Plaintiff claims that she reported the Defendant’s encroachment on her land but this did not deter the Defendant. In the plaint filed in court on 10/10/2012, the Plaintiff seeks a declaration that the Suit Property belongs to her and a permanent injunction to restrain the Defendant from entering, excavating, building or in any manner interfering with the Suit Property. She also seeks general damages for trespass and waste together with interest and costs.

2. The Defendant filed her defence on 14/6/2013 in which she denied the Plaintiff’s claim and maintained that she had not trespassed on the Plaintiff’s plot no. 27627/54. She maintained that she was constructing on her own plot which is number 27627/96.

3. The Plaintiff gave evidence and called two other witnesses to testify on her behalf. She stated that she is the registered owner of the Suit Property which had previously been allocated to her father who transferred it to her in 2006. A beacon certificate was issued to her on 19/8/2010 after she was shown the beacons demarcating the plot by Mr. Robert Muturi who carried out the survey work. When she learned in September 2010 that the Defendant had trespassed on the Suit Property, she went to G. M. Muhoro Advocates who wrote to the Defendant on 10/9/2010 asking her to remove her house from the land so that its rightful owner could develop the plot. Another letter was written to the Defendant on 17/2/2012 requesting the Defendant to vacate the land. The Plaintiff produced a copy of the register of members of Kandara Development Company Limited showing the members and the plots allocated to them. The Plaintiff’s name appears at number 54 against which it is indicated that she was allocated plot number 27627/54.

4. Josphat Mwangi Njau, the chairman of Kandara Development Company Limited also gave evidence. He produced the register of the members of his company and confirmed that the Suit Property was initially allocated to Karera Kaguchia, who was the Plaintiff’s father. He stated that according to the records held by the company, plot number 27627/96 is registered in the name of the Defendant. He also confirmed that plot number 27627/54 and 27627/96 are situated in different locations as can be seen in the survey plan. When the dispute arose he went to the land with the surveyor who subdivided the plots and established that the Defendant had constructed a permanent house on plot number 27627/54 which belongs to the Plaintiff while her own plot number 27627/96 was vacant.

5. Robert Muturi Kaniu, the surveyor who subdivided the land gave evidence. He produced a copy of the beacon certificate which he issued on 19/8/2010 to the Plaintiff. He produced the survey map F/R no. 339/78 which he used in the subdivision and marking of beacons and which shows that land reference numbers 27627/54 and 27627/96 are physically located in different locations. He also confirmed that the Defendant had constructed on the Plaintiff’s plot while her own plot number 27627/96 lies vacant and unoccupied.

6. The court has considered the evidence together with the submissions of the Plaintiff filed on 2/4/2019. The Defendant did not participate at the trial. Both the chairman of Kandara Development Company Limited and the surveyor who subdivided the land confirmed that the Defendant had constructed on the Plaintiff’s plot which is L.R. number 27627/54 and left her own plot which is L.R. number 27627/96. The survey plan for the area shows that the two plots are far apart and are not even adjacent to one other.

7. The court is satisfied that the Plaintiff has proved her claim on a balance of probabilities and grants prayers (a) and (b) of the plaint. Having established trespass, the court awards the Plaintiff general damages of Kshs. 500,000/= against the Defendant. The Plaintiff will have the costs of the suit.

**Dated and delivered at Nairobi this 21<sup>st</sup> day of May 2019**

**K.BOR**

**JUDGE**

**In the presence of:-**

Mr. T. M. Kaburu for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant