



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC. CASE NO. 951 OF 2012**

**RAPHAEL KARIUKI WAMAE.....1ST PLAINTIFF**

**JOSEPH GITONGA WAMAE.....2ND PLAINTIFF**

**VERSUS**

**NANCY WANYOIKE.....I ST DEFENDANT**

**TRANSAFRICA ENGINEERING WORKS LTD.....2 ND DEFENDANT**

**JUSTUS WAINAINA NJUGUNA.....3 RD DEFENDANT**

**ANDREW MAINA NJUGUNA.....4 TH DEFENDANT**

**JUDGMENT**

1. The plaintiffs brought this suit on 5/12/ 2012 through a plaint of even date. An amended plaint dated 22/3/2013 was filed on 25/3/2013. A further amended plaint dated 16/10/2013 was filed on 18/10/2013. The plaintiffs contended that they were the registered proprietors of **Land Title Number: Thika Municipality Block 5/2012 (the suit property)** and that the defendant had trespassed onto the suit property and had erected a perimeter wall around the suit property. Arising from the said trespass, they had been constrained to incur costs of hiring an excavator and low-loader to bring down the perimeter wall. Thereafter, they dug up holes with a view to putting up a live wire fence, but the defendants filled up the holes.

2. Aggrieved by the defendants' continued trespass, they brought the suit seeking the following orders:

*1) Special damages.*

*a) Cost of hire of excavator and low-loader amounting to Kshs.72, 500/=.*

*b) Deposit for fencing the plot amounting to Kshs. 150,000/=.*

*2) Permanent injunction restraining the defendants and/or through her servants or agents from trespassing, encroaching on the plaintiffs' land, and dispossessing the plaintiffs' off their land or any portion of their land thereto.*

*3) General damages.*

*4) Costs of the suit*

*5) Interests on (1) and (4) above at court rates.*

3. On 18/10/2013, the firm of Violet Barasa & Company advocates filed a notice of appointment on behalf of the 2nd, 3rd and 4th defendants but did not file a defence to the suit. On 13/7/2017, I directed the plaintiffs to serve summons through a notice in either the Daily Nation or the Standard Newspaper Newspaper. Subsequently, summons were served through a notice published in the Daily Nation on 23/8/2017. No defence was filed by the defendants. Consequently, the suit proceeded to hearing as an undefended cause.

4. At the hearing the plaintiffs called one witness, RAPHAEL KARIUKI WAMAE – PW1. He adopted his written statement dated 16/10/2013 and produced the following 21 documents.

- a) *Letter of Authority*
- b) *Letter dated 15th March, 1982*
- c) *Records of Trans-Africa Engineering Works*
- d) *Application for Industrial plot – Thika Town*
- e) *Letter of Allotment dated 18/12/1984*
- f) *Letter To Commissioner of Lands dated 8th October, 1990*
- g) *Letter of Allotment dated 18/6/1999*
- h) *Certificate of lease*
- i) *Official Search*
- j) *Bundle of receipt*
- k) *Letter dated 31st January 2011*
- l) *Receipts for payments of rates*
- m) *Letters for payments of rates*
- n) *Letters dated 25/9/2012*
- o) *Map*
- p) *Letters dated 9th October, 2012*
- q) *Photographs*
- r) *Receipt dated 13/11/12, 12/11/12*
- s) *Photographs*
- t) *Certificate of Incorporation*
- u) *Details trans Africa Engineering Works Limited*
- v) *Receipt for payment of search*

5. The plaintiffs, through counsel, subsequently filed written submissions dated 18/1/2019 in which they reiterated their claim and urged the court to grant the prayers sought in the plaint.

6. I have considered the tenor and import of the plaintiffs' suit. I have also considered the evidence presented by the plaintiffs and their counsel's submissions. The plaintiff's pleadings and evidence were uncontroverted.

7. Among other documents, PW 1 produced a certificate of lease together with an official search. The two documents bear that the plaintiffs as the registered proprietors of the suit property. PW1 also produced a receipt dated 13/11/2012 for Kshs 72,500 relating to hire of excavator and low-loader, issued by M/s Welltech & Supplies. Further, he produced a receipt dated 12/11/2012 for Kshs 150,000 relating to labour costs, issued by M/s Tepot Builders & Construction.

8. In the absence of defence and controverting evidence, I am satisfied that the plaintiffs have proved their case on a balance of probabilities. I will accordingly enter judgment in favour of the plaintiffs in terms of prayers 1, 2, 3 and 5 of the further amended plaint. Costs will include monies paid to the newspaper proprietors to buy space for the notice(s).

9. No basis was laid either through evidence or submissions to support the claim for general damages. I will therefore not award that limb of the claim.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 9TH DAY OF MAY 2019.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr Obuya holding brief for Mr Rotich advocate for the plaintiffs

June Nafula - Court Clerk