



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 55 “B” OF 2016

JOYCE NYABOKE OKINYI.....PLAINTIFF

VERSUS

ISAAC WAWERU.....1ST DEFENDANT

SAMUEL WANJOHI.....2ND DEFENDANT

JUDGMENT

(Suit by plaintiff to have defendants permanently restrained from suit land; plaintiff having been allotted the suit land by the Government and paying the requisite fees; defendants entering the suit land and interfering with her possession; no defence filed by the defendants; judgment entered for the plaintiff)

1. This suit was commenced through a plaint which was filed on 25 February 2016. In the plaint, the plaintiff pleaded that she is the owner of the land described as parcel No. 1129 Ol Jorai Phase 1 Settlement Scheme (the suit land). She pleaded that in the year 2014, the defendants, without her permission, entered the suit land and erected temporary structures on it and started living in them. The plaintiff then caused the defendants to be charged in Nakuru Chief Magistrate’s Court, Criminal Case No. 2625 of 2014. The case was later compromised after the defendants promised to move out and demolish the temporary structures, but they refused to do so. In this case, the plaintiff seeks orders to have the defendants restrained from the suit land.

2. Despite being served, the defendants did not enter appearance nor file defence. Neither did they appear during the hearing of the case despite being duly served.

3. In her evidence, the plaintiff produced a letter of offer for the suit land, given to her by the Director of Land Adjudication and Settlement, and receipts showing that she paid the money demanded of her. She testified that after the defendants were charged with the criminal offence, they pleaded with her to withdraw it, which she did, but they have since refused to move out of her land.

4. PW-2 was Charles Okinyi Gesora, the husband of the plaintiff. He more or less reiterated the evidence of the plaintiff and added that the defendants’ parents own land that abuts the plaintiff’s.

5. With the above evidence the plaintiff closed her case. Mr. Geke, learned counsel for the plaintiff, made written submissions where he more or less rehashed the evidence tendered.

6. I have considered the matter. The only material that I have is that supplied by the plaintiff as the defendants opted not to file any pleadings nor bring any evidence in this matter. From the evidence, I am persuaded that the plaintiff was offered the suit land by the Government and I have seen that she has duly paid the fees that she was required to pay before being issued with title. The defendants do not seem to contest her title. From the evidence, it appears that the defendants were charged in court but they pleaded with the plaintiff to withdraw the charges on their promise to move out of the land. It appears that the defendants reneged on their promise to move out after the plaintiff had withdrawn the criminal charges.

7. Despite the plaintiff not displaying the title deed to the suit land, I am persuaded from the evidence that she is the lawful allottee of the land. In any event, the defendants have not come to court to demonstrate a title that is better than that of the plaintiff, and indeed they have not demonstrated that they are entitled to any proprietary rights over the suit land.

8. That being the case, I have no reason to deny the plaintiff the orders that she has sought. The defendants must move out of the plaintiff’s land and must keep away from it. In essence, I do issue orders of eviction of the defendants from the suit land and also issue orders of permanent injunction against the defendants barring them from entering, being upon, utilizing, or in any other way interfering with the

plaintiff's quiet possession of the suit land. The defendants must vacate the suit land within 14 days of being served with this judgment or decree and if they do not do so they may be forcibly evicted.

9. The plaintiff will also have the costs of this case jointly and/or severally against the defendants.

10. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 30th day of September 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Bosire holding brief for Mr. Geke for plaintiff.

No appearance for defendants.

Court Assistants: Nancy Bor/Alfred Cheron.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU