



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC PETITION NO. 1514 OF 2016

PETER WAWERU NDUNGU..... PLAINTIFF

VERSUS

HANNAH WANJIKU KIMANI..... DEFENDANT

JUDGEMENT

1. The plaintiff has filed this suit against the defendant seeking

(a) An order of injunction be issued directing the plaintiff to remove the structure in the Plot No. Nguirubi/Ndiuni/T89 and to restrain her by herself, her servants, agents, employees or any other person claiming her authority or otherwise howsoever from interfering, trespassing, in the said plot.

(b) Damages of trespass.

(c) Costs and interest.

(d) Any other or further relief this honourable court may deem fit and just to grant.

2. The defendant who was duly served with copies of plaint and summons stated appearance neglected and/or failed to enter appearance and or file defences within the prescribed period. Interlocutory judgment was then entered against the defendant and the matter set down for formal proof.

3. PW1 Peter Waweru Ndungu told the court that he bought the suit property from Robert Kiarie Ndungu. He told the court that he wished to rely on his witness statement dated 5th December 2016 and filed in court on the same date. He also relied on the list of documents dated 5th December 2016. He further told the court that the defendant has trespassed on to his parcel of land and constructed a mud house. He prays that she be compelled to vacate the suit property.

4. The plaintiff's case is uncontroverted. In support of his case he produced the following documents as exhibits.

- A receipt dated 10th May 1990 exhibit P1.

- Provisional allocation card as exhibit P2

- Ballot card as exhibit P3.
- Map of the area as exhibit P4.
- Letter dated 8th December 2016 by County Council of Kiambu as exhibit P5.
- Document dated 21st October 2004 by the defendant's mother in law as exhibit P6.
- Letter dated 23rd May 2005 by DO Nduiya as exhibit P7.
- Letter dated 9th November 2010 by the plaintiff as exhibit P8.
- Extract of Minutes of Kiambu County Council for 29th July 2003 and 21st August 2003 as exhibit P9.
- Photograph of the structure as exhibit P10.
- Demand letter as exhibit P11.

5. In conclusion, I find that the plaintiff has proved his case against the defendant on a balance of probabilities. The photograph shows a complete mud house. It is not in doubt that he defendant has trespassed onto the plaintiff's suit house by constructing a mud house. Trespass is a tort which is actionable *per se*. I award Kshs.200,000/- being damages for trespass.

6. Accordingly judgment is entered in favour of the plaintiff as against the defendant as follows:-

(a) A mandatory injunction is hereby issued directing the plaintiff to remove the structure in the Plot No. Nguirubi/Ndiuni/T89 within sixty (60) days from the date of this judgment. In default, the plaintiff be at liberty to evict her through lawful means.

(b) A permanent injunction is hereby issued restraining the defendant by herself, her servant, agents, employees or any other person claiming under the authority or otherwise howsoever from interfering with the suit plot.

(c) General damages for trespass Kshs.200,000.

It is so ordered.

Dated, signed and delivered in Nairobi on this 18th day of December 2019.

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Macharia for the Plaintiff

No appearance for the Defendant

Kajuju - Court Assistant