



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 103 OF 2017

CYRUS MWAURA NJENGA.....PLAINTIFF

=VERSUS=

SALYVIAH THUO.....DEFENDANT

JUDGMENT

1. On 10/2/2017, the plaintiff brought this suit seeking the following verbatim orders against the defendant:

a) A permanent injunction do issue restraining the defendant, by herself, her agents, servants, workmen and/or anyone claiming through her from interfering with the plaintiff's Land Reference Number Nairobi/Block 120/62.

b) Eviction order do issue in respect of Land Reference Number Nairobi/Block 120/62.

c) General damages for illegal encroachment of the plaintiff's Land Reference Number Nairobi/Block 120/62.

d) Costs of the suit

2. The plaintiff's case is that he is the registered proprietor of Land Reference Number Nairobi/Block 120/62 (**the suit property**). The defendant is his neighbour. In April 2016 the defendant encroached and commenced construction on the suit property. This prompted him to report the matter to Kayole Police Station upon which the defendant was summoned and advised to cease the construction. On 2/2/2017, he visited the suit property and found that the defendant had erected a *mabati* fence on the suit property and was carrying out construction works on the property. He consequently brought this suit.

3. On 22/2/2017, the defendant filed a notice of appointment by M/s Maosa & Company Advocates dated 21/2/2017. She did not however file any defence. The suit came up for hearing on 10/12/2019. Satisfied that the defendant's advocates had been served with a hearing notice on 30/9/2019 but were absent, the court heard the plaintiff *ex-parte*.

4. The plaintiff testified as PW1. He adopted his written statement dated 9/2/2017. His testimony was that he was the registered proprietor of Land Title Number Nairobi/Block 120/62. Prior to his acquisition of the suit property, a surveyor by the name Dominic Ngari pointed out the beacons of the property. In April 2016, the defendant encroached on the suit property, prompting him to report the matter to Kayole Police Station where the defendant was summoned and advised to stop the illegal construction which he was carrying on the suit property. On 2/2/2017, he learnt that the defendant had commenced construction of a stone wall round the suit property and she had tried to conceal the construction by erecting a *mabati* fence round it. She urged the court to grant the orders sought in the plaint.

5. The plaintiff produced the following documents: (i) Letter of Allotment dated 11/8/1992; (ii) Letter dated 24/9/1992 from Roysambu Housing Company Limited; (iii) Receipt dated 19/5/1993; (v) Letter dated 5/8/1994; (vi) Lease registered on 19/8/1994; (vii) Certificate of Lease dated 19/8/1994; (viii) Principal Surveyor's Report dated 19/12/2017; (ix) Sketch Plan for Provincial Numbers Nairobi Block 120/61 and 62; and (x) Copy of Forwarding Letter dated 2/2/2018.

6. In her brief oral submissions made on the day of trial, Ms Wambui stated that the Surveyor's Report indicated that the defendant had fenced both her plot and the plaintiff's plot into a single parcel and that is why the plaintiff sought the intervention of the court.

7. I have considered the plaintiff's pleadings, evidence and submissions. The defendant was given the opportunity to put forth her case. Other than filing a notice appointing an advocate, she did not put forth her case. The plaintiff has demonstrated through evidence that he is the registered proprietor of Land Title Number/Nairobi Block 120/62. The defendant owns Nairobi Block 120/61 which abuts the plaintiff's property. The plaintiff has further demonstrated that on or about 2/2/2017, the defendant annexed the plaintiff's land, fenced it off as part of Parcel Number 61 and erected one perimeter wall round the two parcels, making it look like the two plots are one parcel of land. There is no explanation tendered as to why the defendant did what is alleged.

8. In light of the above evidence, I am satisfied that the plaintiff has proved his case on a balance of probabilities. The plaintiff did not however tender any evidence to assist the court assesses damages arising from the encroachment. I will therefore only award the plaintiff nominal damages assessed at Kshs 500,000.

9. I accordingly make the following disposal orders in tandem with the prayers which were sought by the plaintiff:

1. A permanent injunction is hereby issued restraining the defendant, by herself, her agents, servants, workmen and/or anyone claiming through her, from interfering with the plaintiff's land, Title Number Nairobi/Block 120/62.

2. An eviction order is hereby issued against the defendant in respect of Land Title Number Nairobi/Block 120/62.

3. The plaintiff is awarded nominal damages of Kshs 500,000 against the defendant.

4. The defendant shall bear costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 13TH DAY OF DECEMBER 2019.

B M EBOSO

JUDGE

In the presence of:-

Court Clerk - June Nafula