



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MURANG'A

E.L.C NO. 55 OF 2017

ALLAN KAMAU GICHUHI.....PLAINTIFF

VS

SAMUEL GICHUHI KIMANI ALIAS SAMUEL MAINA GICHUHI.....1ST DEFENDANT

ARTHUR KIMANI GICHUHI.....2ND DEFENDANT

SAMSON NGAHU GICHUHI3RD DEFENDANT

JUDGMENT

1. The Plaintiff filed suit against the Defendants on the 28/7/16 seeking the following orders;

a. An order directed against the 1st Defendant to transfer parcel No LOC13/KARUNGE/3178 to the Plaintiff herein in lieu thereof and the Court to order the cancellation of all the titles and the lands to revert into the names of Gichuhi Kimani their deceased father.

b. Kshs 270,000 being the value of the destroyed developments

c. Permanent injunction against the Defendants their agents servants or anybody working or claiming under them from in any way interfering committing acts of waste or tampering with the Plaintiffs quiet possession of all land measuring approximately 0.7 acres now occupied by the Plaintiffs

d. Kshs. 15,000/- being the valuers fees

e. Damages for trespass

a. Costs and interest of the suit.

2. The Plaintiffs claim is summed as the parcel No LOC13/KARUNGE/3178 which he avers he has occupied and developed. He also claims damages to property in the sum of Kshs 270,000/- .

3. The Defendants whilst admitting that the Plaintiff is entitled to parcel LOC13/KARUNGE/3178 averred that it is the Plaintiff who has not processed his title at the land's office. They also denied any destruction of Plaintiff's property and sought to put the Plaintiff to strict proof.

4. On the 24/1/2018 the parties entered into a partial consent which was adopted by the Court as a partial judgment. In it the Defendants transferred parcel No LOC13/KARUNGE/3178 to the Plaintiff.

5. The hearing proceeded in respect to prayers b c d e and f.

6. At the hearing the Plaintiff testified and stated that in an attempt to evict him from the suit land the Defendants destroyed his property on the suit land which included crops and developments. He stated that he commissioned a valuer to assess the damage and paid Kshs 10,000/- as valuation fees.

7. The Plaintiff stated that the Defendants are responsible for the damages.

8. PW2 – Peter Gitau Ngugi testified and informed the Court that he is valuer practicing in the firm of Upcountry Valuers. That on instructions by the Plaintiff, he carried out a valuation of the damages on the suit property. He produced the valuation report in Court. That he computed the value of the damages in the sum of kshs 270,000/-.

9. The Defendants failed to give evidence in the suit.

10. The parties filed written submissions which I have read and considered.

11. The key issue for determination is whether the Plaintiff is entitled to the prayers sought above.

12. Section 3 (1) of the Trespass Act, Cap 294 provides that:

"Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence."

13. Thus, trespass is an intrusion by a person into the land of another who is in possession and ownership. It is trite that trespass is actionable *per se*.

14. The Plaintiff led evidence that the Defendants entered his portion of the land in an attempt to evict him and destroyed his crops on the suit land. The Defendants have not categorially denied except to state that the valuation report cited the old number that had been closed upon subdivision in 2016. It is the evidence of the Plaintiff that when he reported the matter to the police they declined to act as by then the land was still registered in the name of the 1st Defendant.

15. It is not in dispute that the Plaintiff has settled on his portion many years before on account of it being family land. Ideally his possession is not being challenged by the Defendants.

16. It is the view of the Court that the Plaintiff proved trespass on a balance of probability.

17. On the issue of general damages for trespass, the issue that arises is: what is the measure of it" This question was answered by E. Obaga J in the case of **Philip Ayaya Aluchio v Crispinus Ngayo [2014] eKLR** where it was held as follows:

"The Plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage" It has been held that the measure of damages for trespass is the difference in the value of the Plaintiff's property immediately after the trespass or the costs of restoration, whichever is less **See Hostler – VS – Green Park Development Co. 986 S. W 2d 500 (No. App. 1999).**

18. I have perused the valuation report dated the 16/6/16 which has itemized the trees (macadamia, grivellia, mangoes, coffee, avocados, blue gum etc). The Valuer gave the assessment of damages in the sum of Kshs 270,000/-. Various pictures were also adduced in evidence.

19. The Plaintiff has sought a concessionary sum of Kshs 150,000/- for damages instead of the sum of Kshs 270,000/- as given by the valuer.

20. I am satisfied that the Plaintiff has proved his claim on a balance of probabilities.

21. In the absence of evidence to the contrary, I make the final orders as follows;

a. Kshs 150,000/- being damages for destroyed crops and developments

b. General damages for trespass in the sum of Kshs 10,000/-.

c. Permanent injunction is hereby ordered against the Defendants their agents servants or anybody working or claiming under them from in any way interfering committing acts of waste or tampering with the Plaintiffs quiet possession of all land measuring approximately 0.7 acres now occupied by the Plaintiffs

d. Kshs 15,000/- being valuation fees is allowed.

e. All payments are payable in equal share by the Defendants to the Plaintiff.

22. Parties are related. I make no orders as to costs.

23. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 11TH DAY OF DECEMBER 2019.

J.G. KEMEI

JUDGE

Delivered in open Court in the presence of:

Kuria HB for Karweru for the Plaintiff

Kiriba for the 1st – 3rd Defendants

Irene and Njeri, Court Assistants