



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC CAUSE NO. 502 OF 2013

MARY BIYAKI BASWETI.....PLAINTIFF

-VERSUS-

SAHULO ONDIEKI ONDIEKI.....DEFENDANT

JUDGEMENT

The Plaintiff commenced the suit herein by way of a Plaint that was filed in court on 19th December, 2013. The Plaintiff stated that at all material times to the suit her late husband Basweti Kengari was the registered owner of a parcel of land known as **SOUTH MUGIRANGO/NYATARO/1721** measuring 1.95Ha.

The Plaintiff avers that the Defendant herein trespassed on the aforesaid parcel of land and commenced construction of temporary structures without her consent and authority and that between 12th July, 2010 to 19th January, 2011 the Defendant filed a case at Etago Land Disputes Tribunal being Case No. 7 of 2010 which matter was decided in favour of the Defendant. However, the Plaintiff filed an Appeal at the Kisii High Court being Appeal No. 6 of 2013 which was decided in the Plaintiff's favour.

The Plaintiff contends that the Defendant never appealed against the said decision and that he continues to trespass on the plaintiff's parcel of land and she thus prays for a declaration that the Plaintiff be declared as the lawful owner of the land parcel **NO. SOUTH MUGIRANGO/NYATARO/1721**.

When summons were served on the Defendant he filed a defence denying that he trespassed on the Plaintiff's land and averring that the Registration of land **NO. SOUTH MUGIRANGO/NYATARO/1721** was done fraudulently.

When the suit was fixed for hearing the Plaintiff stated that she was the widow of the late Basweti Kengari and that she has obtained letters of administration for the estate of the deceased and she produced a copy of the grant as an exhibit.

In her evidence in chief the Plaintiff stated that the suit land was registered in the name of her husband but when he died she moved to Kericho to pick tea at the plantations to support their children and it was during this time that the Defendant took possession and occupation of the suit land thus denied them to access the land.

The Plaintiff further stated that the dispute herein was referred to the Land Disputes Tribunal which ruled in favour of the Defendant but that was overturned on Appeal at the High Court sitting in Kisii on 20th September, 2013.

The Plaintiff prays that since the Defendant did not Appeal against the decision of the High Court and he continues to occupy the suit land to her detriment, the court declare that she is the lawful owner of parcel **NO. SOUTH MUGIRANGO/NYATARO/1721** and the Defendant be evicted.

When the suit came up for hearing though the defendant entered appearance and filed a Defence, he was not present on the day of the hearing and the case proceeded his absence notwithstanding.

I have heard the testimony of the Plaintiff which remains uncontroverted in the absence of the Defendant and the issues before me for determination are whether the Plaintiff's deceased husband is the registered owner of the parcel of land and whether, the Defendant trespassed on the Plaintiff's land and what remedy the court will give.

From the pleadings filed it is not in dispute that the Plaintiff's husband was the registered owner of the suit land. The plaintiff in her evidence in chief had produced a certificate of official search dated 9th December, 2013 showing that land Reference No. South Mugirango/Nyataro/1721 was absolutely registered in the name of one Baswati Kengani who the Plaintiff's wife herein had obtained letters of administration in respect of his estate.

From the foregoing therefore and in the absence of evidence in rebuttal I do find that the late Basweti Kengai is the absolute and lawful owner of land reference No. South Mugirango/Nyataro/1721.

On the 2nd issue on whether the defendant is a trespasser, the Plaintiff has shown that indeed ever since the matter was before the tribunal the Defendant has been in occupation of the land to her detriment. The Defendant in my view has neither authority nor the consent of the Plaintiff and that makes him a trespasser ibnitio.

From the foregoing it is my finding that the Plaintiff has proved her case on a balance of priority and I do make the following orders:-

- 1. A declaration do issue that the Plaintiff is the owner of the land parcel No. South Mugirango/Nyataro/1721.**
- 2. That an order of eviction do issue against the Defendant which order be done in conformity with the provisions of section 152 (a) to (g) of the land Act (revised 2015).**
3. That the costs of the suit to the Plaintiff.

DATED, SIGNED and DELIVERED in open court at **KISII** on this **23rd** day of **February, 2018**.

Mohammed Noor Kullow

Judge

In the presence of:-