



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO. 57 OF 2016

MARY CHEROTICH.....PLAINTIFF

VERSUS

MARY CHEROTICH BUSIENEI.....DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff instituted this suit against the Defendant seeking an order of eviction in respect of an unsurveyed plot number UNS Residential Plot No 320 within Kericho Municipality. The Plaintiff's case is that she is the allottee of the said plot.
2. Despite being served with Summons to Enter Appearance, the Defendant neither entered Appearance nor filed a Defence and the case proceeded ex-parte.

Plaintiff's case

3. It is the Plaintiff's uncontroverted evidence that she was issued with a letter of allotment dated 18th June, 2012. She produced a copy of the said letter as her exhibit. She further testified that sometime in 2016 she noticed that the Defendant had encroached on her land and put up some temporary structures. She then issued a demand notice to the Defendant requiring her to vacate the suit property but the Defendant refused to vacate, prompting the filing of this suit. The Plaintiff testified that as a result of the Defendant's acts of trespass, she has been deprived of the use and enjoyment of her land.

Issues for Determination

4. The following issues emerge for determination:
 - i. Whether the Plaintiff has proprietary rights over all that property known as Unsurveyed Plot no. 320 situated within Kericho Municipality
 - ii. Whether the Defendant trespassed onto the Plaintiff's property
 - iii. Whether the Plaintiff is entitled to the reliefs sought

Analysis and Determination

5. The plaintiff's testimony which was unchallenged is that she is the allottee of the suit property, having been issued with a letter of allotment on 18th June, 2012.
6. In Nairobi **ELC No. 537 of 2005 Waas Enterprises Ltd V County Council of Nairobi & Another (2014)** eKLR Gitumbi J agreed with Warsame J in **Rukaya Ali Mohammed V David Gikonyo Nambacha & Another Kisumu HCCC No 9 of 2004** where he held that:

“Once an allotment letter is issued and the Allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute rights of ownership or proprietorship unless it is challenged by the allotting authority or it is acquired through fraud, mistake or misrepresentation, or that the allotment was out-rightly illegal or it was against public interest. In other words, where the land has been allocated, the same land cannot be re-allocated unless the first allocation is validly and lawfully cancelled”

7. There is nothing on record to show what claim the Defendant has over the suit property. The plaintiff has therefore proved that she has a proprietary interest over the suit property and is thus entitled to protection of her rights in accordance with Article 40 of the Constitution.

8. Regarding the second issue, the plaintiff testified that the defendant trespassed onto her land in 2016 and she sought to find out from the defendant why was she was on the suit property. The plaintiff testified that the Defendant claimed that she had been allocated the suit property. However, no evidence was produced by the Defendant to demonstrate that she has any right to the suit property. It is therefore my finding that the defendant is a trespasser on the suit property.

9. In view of the foregoing, the plaintiff has proved her case on a balance of probabilities. I therefore enter judgment for the Plaintiff and make the following final orders:

- a. That the Defendant do vacate the Plaintiff's property known as UNS Residential plot no. 320 within Kericho Municipality within 3 months failing which the Plaintiff may forcefully evict her using any lawful means.
- b. The costs of this suit be borne by the Defendant.

Dated, signed and delivered at Kericho this 16th day of February, 2018.

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J.M ONYANGO

JUDGE

In the presence of:

1. Plaintiff present in person
2. No appearance for the Defendant
3. Court assistant - Wambany