



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 818 OF 2014

JOHN MAKERI KIMANI..... PLAINTIFF

VERSUS

LEAH S. WARUINGI..... DEFENDANT

JUDGMENT

1. On 23/6/2014, through a plaint bearing even date, the plaintiff brought this suit seeking the following prayers;

a. A declaration that the encroachment into and the erection of building structures by the defendant on the plaintiff's plot No. C.89 at Langata Development Company Limited Estate is unlawful.

b. An order that the defendant do pay compensation to the plaintiff for the value of the encroached portion in the sum of Ksh. 370,000 with interest thereon at court rates from the date of filing suit till payment in full or in the alternative – the defendant do demolish and remove at her cost the structures erected on the suit property – Plot No. C.89 – within 30 days of the date of judgment and in default thereof the plaintiff be at liberty to demolish and remove the said structures and the cost thereof be recoverable from the defendant.

c. Any other relief that this court may find just and expedient.

d. The defendant to pay the costs of this suit.

2. Hearing of the suit proceeded *ex parte* because the defendant neither entered appearance nor filed defence.

3. The plaintiff's case is that he is the beneficial owner of unsurveyed plot designated as Plot No C89 within the Langata Development Company Limited Estate, off Githurai-Mwihoko Road, Kiambu County. Abutting the plaintiff's plot within the same estate is the defendant's unsurveyed plot designated as Plot No. C90. The plaintiff contends that the defendant has encroached onto a portion of his plot and has erected thereon structures. The plaintiff puts the value of the portion of the plot upon which the defendant has encroached at Kshs 370,000. It is because of this alleged encroachment that the plaintiff seeks compensation equivalent to the value of the encroached portion in the sum of Kshs. 370,000. In the alternative, the plaintiff prays for an order directing demolition of all the defendant's structures on the encroached portion.

4. The plaintiff gave sworn testimony in support of his case. He adopted his witness statement dated 23/6/2014 and produced a total of 10 exhibits in support of his claim. His testimony is as summarized in

the preceding paragraphs.

5. Among the documents produced by the plaintiff are Share Certificate from Langata Development Company Limited, Letter of Allotment in respect of Plot No. C.89, various Receipts, Application to Transfer Shares from Julius Mwangi Wanjohi to the plaintiff and a Valuation Report dated 24/1/2014 by M/s Zanconsult Valuers, putting the value of the encroached portion of land at Kshs. 370,000.

6. I have reflected on the prayers sought by the plaintiff. In the absence of any defence from the defendant, I will grant the following prayers which I consider to be the most appropriate in the circumstances of this suit and taking into account the fact that declaratory orders are not the most appropriate in disputes involving unsurveyed and untitled land;

a. The defendant shall pay compensation to the plaintiff for the value of the encroached portion of land in the sum of Kshs. 370,000 together with interest thereon from the date of this judgment.

b. The defendant shall pay the plaintiff costs of this suit.

Dated, signed and delivered at Nairobi on this 2nd day of February 2018.

B M EBOSO

JUDGE

In the presence of:-

Ochako holding brief for Kingara Advocate for the Plaintiff

No appearance for the Defendant

Halima Court clerk