



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

CASE NO. 335 OF 2014

PRISKA MWANGO RATEMO.....PLAINTIFF

VERSUS

ZEBEDEO NYABAYO AGAGI.....DEFENDANT

J U D G M E N T

1. The plaintiff commenced the instant suit vide a plaint dated 13th August 2014 filed in court on 29th August 2014. The plaintiff is the personal legal representative of her late husband John Ratemo Matara (deceased) who was the registered proprietor of land parcel **LR No. Wanjare/Bomariba/1530** (hereinafter referred to as “**the suit property**”).

2. The plaintiff avers that sometimes in February 2003 she and her late husband orally agreed to lease to the defendant the suit property for a period of 10 years at the consideration of Kshs.10,000/= . She states that the lease period expired in the month of February 2013 but avers that the defendant has refused to yield vacant possession of the suit property and continues to utilize the suit property inspite of demand that he grants vacant possession and has threatened to use violence on the plaintiff and members of her family should they attempt to regain possession.

3. The plaintiff prays for judgment against the defendant for:-

a. Vacant possession and/or eviction of the defendant from land parcel number Wanjare/Bomariba/1530.

b. Mesne profits.

c. Costs of the suit.

The plaint was filed simultaneously with an application for injunction and the application together with the summons to enter appearance, the plaint and accompanying documents were served on the defendant on 19th September 2014 as per the filed affidavit of service dated 3rd November 2014. The order for injunction was granted ex parte as the defendant did not attend the interpartes hearing of the application on 26th January 2015. The extracted court order was served on the defendant on 16th February 2015.

4. The defendant did not enter any appearance and did not file any defence. The suit was fixed for formal proof hearing on 6th March 2018 when the plaintiff testified in support of her claim.

5. The plaintiff in her evidence repeated her averments as contained in her plaint and relied on her witness statement filed together with the plaint and the bundle of documents she had filed in support of her case. The plaintiff's case is that the defendant pursuant to an oral lease entered into between the plaintiff's late husband and the defendant, the defendant was allowed the use of the suit property for a period of 10 years with effect from February 2003. The period of the lease expired by February 2013 whereupon the plaintiff requested the defendant to vacate the suit land but the defendant refused and threatened the plaintiff with violence should she reenter the land. This precipitated the filing of the instant suit. The plaintiff in support of her case relied on her bundle of documents filed herein namely:-

- i. Certificate of death of her late husband John Ratemo Matara.
- ii. Letters of Administration Ad-Litem issued in Kisii HC Succ. Cause No. 671 of 2013.
- iii. Copy of land certificate for land parcel Wanjare/Bomariba/1530 Ino John Ratemo Matara.
- iv. Copy of official search for land parcel Wanjare/Bomariba/1530 dated 31st July 2014.

6. On the basis of the evidence tendered by the plaintiff and documents tendered in support of the plaintiff's claim, I am satisfied that the plaintiff's late husband John Ratemo Matara was the registered proprietor of the suit property. As per the copy of the official search dated 31st July 2014 the suit property was registered in the plaintiff's late husband's name on 16th April 1984 and a title was issued to him on the same day. The copy of the title tendered in evidence affirms this position. The defendant though served with the plaint and summons to enter appearance never appeared and therefore the plaintiff's evidence that he was leased the suit property remains uncontroverted. I have no reason to disbelieve the plaintiff. The defendant after the expiry of the lease continued to utilize the suit property unlawfully and he is now in the position of a trespasser.

7. I am satisfied the plaintiff has been denied access to and use of the suit property. The defendant has been trespassing onto the suit property since March 2013. The plaintiff is entitled to damages and/or mesne profits on account of trespass. I award the plaintiff nominal damages for trespass in the sum of kshs. 30,000/=.

8. In the result, I hold and find that the plaintiff's case has been proved on a balance of probabilities and I enter judgment in favour of the plaintiff against the defendants on the following terms:-

- 1. The defendant be and is hereby ordered to vacate land parcel number Wanjare/Bomariba/1530 within 30 days of being served with the decree herein.**
- 2. That in default of complying with (1) above an eviction order for the defendant's forcible removal from the land to be issued upon application by the plaintiff.**
- 3. Damages in the sum of kshs. 30,000/= on account of trespass together with interest at court rates from the date of judgment.**
- 4. Costs of the suit awarded to the plaintiff.**

JUDGMENT DATED, SIGNED and DELIVERED at KISII this 20TH DAY of APRIL, 2018.

J. M. MUTUNGI

JUDGE

In the presence of:

Ms. Momanyi for the plaintiff

N/A for the 1st, 2nd, 3rd and 4th defendants

Ruth court assistant

J. M. MUTUNGI

JUDGE