



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC NO. 583 OF 2012

ESTHER WANJIKU WAWERU..... PLAINTIFF

=VERSUS=

DAVID ONDERI ALIAS “ MAJOR”

ALIAS DOMINIC ONDERI OMAMBIA..... DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit against the Defendant claiming the following reliefs:-

a. That the defendant be permanently restrained by an order of injunction from trespassing onto, entering or erecting or building any structures on the plaintiff's two (2) parcels of land Nos.P 8533 and P 8534 situated on LR.179/41,Ruai ,Nairobi.

b. A declaration that the above two (2) plots Nos.P 8533 and P.8534 rightly belong to and are owned by the plaintiff.

c. Costs of this suit.

2. The Plaintiff was duly served with summons to enter appearance and file defence but he did not. The plaintiff was later amended and fresh summons were served. The defendant did not enter appearance and file defence on time. He nevertheless filed defence out of time but never served the same upon the plaintiff's advocate. An application was made seeking to strike out the defence. The defendant's advocate though served did not file any replying affidavit and never appeared during hearing of the application.

3. The defence was struck out. The defendant was later served for formal proof but did not appear in court. The hearing therefore proceeded ex-parte.

4. The plaintiff testified that in 1997 she bought two plots from Embakasi Ranching Company Limited. She was duly given certificate of ownership for the two plots. She was even given beacon certificates. In May 2012, she was informed that someone had trespassed into her plots and erected a structure on the same. She made enquiries and found out that it was the defendant who had trespassed into the properties. She reported the intrusion to Ruai Police Station. The defendant was summoned but he never appeared. The plaintiff reported the trespass to CID Headquarters now called the Directorate of Criminal Investigations. The plaintiff did not attend as summoned.

5. I have gone through the documents produced by the plaintiff. There are two certificates of plot ownership in respect of plot Nos. P 8533 and P 8534. The two plots were allocated to the plaintiff on 9/10/1997. The Plaintiff produced photographs of an incomplete house. There is also evidence that on 18/6/2012 , the plaintiff paid Kshs.40,000/= to Embakasi Ranching Company Limited. On 19/6/2012 she was taken to the Physical location of the plots where she was shown the plots.

6. The Plaintiff's evidence is not controverted. I find that the plaintiff has proved her case against the defendant on a balance of probabilities. I therefore enter judgement for the plaintiff against the defendant as follows:

a. A declaration is hereby issued that the plaintiff is the rightful owner of plot Nos. P 8533 and P 8534 comprised in LR No. 179/41 Ruai in Nairobi.

b. A permanent injunction is hereby issued restraining the defendant from trespassing onto, entering or erecting of building structures on land parcel Nos. P 8533 and P 8534 comprised on LR 179/4,Ruai, Nairobi.

c. The defendant shall pay costs of this suit.

Dated, Signed and Delivered at Nairobi this 19th day of April 2018.

E.O .OBAGA

JUDGE

In the presence of ;-

Mrs Kuria for Plaintiff

Court Assistant: Hilda

E.O .OBAGA

JUDGE