



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT EMBU

E.L.C. CASE NO. 6 OF 2016

ELIZABETH WANGUI GACHIHI.....PLAINTIFF

VERSUS

NYAGA MUCHUNGU alias NYAGA MUCHAMO....DEFENDANT

JUDGEMENT

1. By a plaint dated and filed on 2nd May 1996 the original Plaintiff, Bernard Gachihi, sued the Defendant herein before the PM's Court at Embu seeking the following reliefs against him;

- a. *Injunction to restrain the Defendant by himself, his agents or employees from damaging, wasting, cutting trees or in any other way from interfering with L.R. Mbeti/Gachuriri/443.*
- b. *Cost of this suit.*
- c. *Interests on (b) above at court rates.*
- d. *Any other relief that this court deem fit and just to grant.*

2. The basis of the suit was that the Plaintiff was the registered owner of *Title No. MBETI/GACHIRIRI/433* (hereinafter known as the ("suit property") which the Defendant had allegedly invaded, cultivated and settled upon without the consent or authority of the Plaintiff. It was further alleged that the Defendant had caused damage to the suit property by cutting down trees and other materials thereon.

3. The said suit was later on transferred to the High Court at Embu whereby the Plaintiff amended the plaint and alleged that the Defendant had invaded his land "sometime in May 1996." The Plaintiff also amended the plaint in some other minor aspects and amended the reliefs sought as follows;

- a. *That an injunction do issue permanently restraining the Defendant by himself, his servants, agents employees and family members from trespassing and/or entering upon, damaging wasting, cutting (sic) or in any other way interfering with land parcel number Mbeti/Gachuriri/443 and the Plaintiff peaceful occupation and use of the said land.*
- b. *That the Defendant do remove himself, his family, servants, agents and property from land parcel number Mbeti/Gachuriri/443 within 14 days from the date of determination of this suit and that in default the Defendant, his family, agents, servants and property be evicted from land parcel number Mbeti/Gachuriri/443.*
- c. *Interests on (b) above at court rates.*
- d. *Any other relief that this court deem fit and just to grant.*

4. The Defendant denied the Plaintiff's claim in its entirety. In his amended defence amended on 10th August 2005 and filed on 16th August 2005, the Defendant pleaded that the Plaintiff's suit was statute-barred under **section 7 of the Limitation of Actions Act**; that he had occupied the suit property prior to 1980 hence the Plaintiff's title was subject to **section 30 (g) of the Registered Land Act (Cap 300)**; and that the Plaintiff had never been in occupation of the suit property at any given time.

5. The Defendant further denied having committed any acts of waste on the suit property. He stated that he had been openly in occupation of the suit property without interference from any person. He prayed that the Plaintiff's suit be dismissed with costs.

6. When the original Plaintiff died, he was substituted with the current Plaintiff, Elizabeth Wangui Gachihi as his personal representative. The Plaintiff filed a further amended plaint to reflect her capacity in the proceedings.
7. When this suit was listed for hearing on 27th November 2017, the Plaintiff called 2 witnesses and closed her case whereas the Defendant similarly called 2 witnesses and closed his case. It was directed that the Plaintiff would file and serve written submissions within 21 days whereas the Defendant was to file and serve his within 21 days upon service by the Plaintiff. However, at the time of preparing this judgement, only the Plaintiff had filed his written submissions.
8. The Plaintiff testified as PW 1 and stated that she was the personal representative of the original Plaintiff, Bernard Gachihi. She stated that her late husband was the purchaser of the suit property. She stated that he bought it in 1989 from Gekara Group Ranch and was issued with a title deed. It was her case that at the time of purchase the suit property was vacant but the Defendant later invaded and occupied the suit property without her husband's consent. She stated that the suit property was originally part of Title No Mbeti/Gachuriri/172 belonging to Gekara Group Ranch.
9. The Plaintiff's second witness was Mwathi Mucembi (PW 2). He testified that the original Plaintiff was a member of Gekara Group Ranch. He stated that he (PW 2) was the secretary of Gekara Group Ranch. He produced a list of membership which indicated that the Group had 129 members. He testified that the Defendant moved into the suit property around 1996 after subdivision and allocation of the Group Ranch land to its members.
10. The Defendant testified in this suit as DW 1. He stated that he was born on the suit property in 1929. He stated that he was a member of Gekara clan and that he had been in occupation of the land as clan land since 1984. He further stated that the original Plaintiff was from Nyeri and not a member of Gekara clan and that he had never seen him or his wife on the suit property. In his witness statement, he stated that the suit property was initially part and parcel of parcel No. 172 which belonged to Gekara clan and that he occupied the suit property in 1984 and had always resided there all along without interference.
11. The Defendant's second witness was James Ireri Gichuri who testified as PW 2. He testified that he knew the Defendant who was residing on the suit property. He denied knowing the Plaintiff. He testified that the Defendant had lived on the suit property since 1984 and that the Plaintiff had never occupied or cultivated the suit property. In his witness statement, he indicated that the suit property was part and parcel of parcel No. 172 which belonged to Gekara clan.
12. The parties herein do not appear to have agreed on the issues for determination. The Defendant filed his version of issues whereas the Plaintiff does not appear to have filed any. However, the court has noted that the main issues for determination in this suit are similar to the ones which arose in *Embu ELC No 224/2015*. The court has also noted that the Defendant herein Nyaga Muchungu is the 10th Plaintiff in that suit whereas the original Plaintiff, Bernard Gichihi was the 14th Defendant.
13. The main questions for determination in *ELC No. 224 of 2015* were whether parcel No. 172 was rightfully the property of Gekara Group Ranch or Gekara clan and whether the registration of Gekara Group Ranch as proprietor of parcel No. 172 was fraudulent. In those circumstances, the instant suit ought to have been consolidated with ELC No. 224 of 2015 because of the commonality of issues of fact, law and the parties.
14. The court also notes that in *Embu ELC No 224 of 2015*, whose judgement was delivered in open court at Embu on 5th April 2018, it was held that parcel No. 172 rightfully belonged to Gekara clan and not Gekara Group Ranch. The court also held that the registration of Gekara Group Ranch as proprietor thereof to have been fraudulent. The court therefore issued a consequential order declaring that all sub-divisions and transfers of parcel No. 172 to the 17 Defendants in that suit was null and void. That judgement is still in force and I hereby adopt and apply it to the instant suit.
15. In view of the foregoing, there is no need for the court to consider the issues for determination herein separately and to render a separate judgement. The judgement in *Embu ELC No. 224/2015* shall equally apply to this suit. The consequence of this is that the Plaintiff's suit shall fail and the same is hereby dismissed. Since the Plaintiffs in ELC No. 224/2015 were awarded costs and the Defendant herein was one of them, there shall be no order as to costs in the instant suit.
16. It is so decided.

JUDGEMENT DATED, SIGNED and DELIVERED in open court at **EMBU** this **12th** day of **APRIL, 2018**

In the presence Mr Andande for the Plaintiff and Ms Nakato holding brief for Mr. A.P. Kariithi for the Defendant.

Court clerk Muinde.

Y.M. ANGIMA

JUDGE

12.04.18