

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 650 OF 2012

GRACE JENDEKA LUSIOLA.....PLAINTIFF

VERSUS

ELIAS MBAU NDUNGU.....1ST DEFENDANT

PAUL IRUNGU KAMAU.....2ND DEFENDANT

JOHN MUNENE NYAGAH.....3RD DEFENDANT

JENIFFER GATHONI.....4TH DEFENDANT

FLORENCE WAKONYO.....5TH DEFENDANT

SAMUEL WAMBUGU.....6TH DEFENDANT

RAPHAEL MUIRU.....8TH DEFENDANT

JOHN NGUGI NJUGUNA.....9TH DEFENDANT

FLORENCE MUREITHI.....10TH DEFENDANT

GEORGE KIURA MUGO.....11TH DEFENDANT

RAPHAEL NDIRANGU MATU.....12TH DEFENDANT

JACINTA W. KARANJA.....13TH DEFENDANT

JAMES KAMAU KITATI.....14TH DEFENDANT

VIRGINIA W. MUGERA.....15TH DEFENDANT

PAUL NGANGA NDERITU.....16TH DEFENDANT

HENRY GITAU NDIRANGU.....17TH DEFENDANT

DORIS K. MAITIMA.....18TH DEFENDANT

JOSEPH MUNYAO KATIKU.....19TH DEFENDANT

LUCY WANGARI KAMAU.....20TH DEFENDANT

JUDGEMENT

1. The Plaintiff seeks a permanent injunction to restrain the Defendants or their agents from remaining on or continuing in occupation of the property known as Ruiru/Ruiru East Block 2/4842 (“the Suit Property”). She also seeks a mandatory injunction to compel the Defendants to vacate the Suit Property and in default, she be at liberty to evict the Defendants and demolish their structures on the Suit Property. Further, the Plaintiff seeks an order directing the Thika District Land Registrar to remove the caution

registered against the Suit Property by the Defendant, general damages for trespass, any other relief the court may deem fit to grant and costs of the suit. The Plaintiff is the registered owner of the Suit Property measuring 1.120 hectares.

2. The Defendants deny the Plaintiff's claim and contend that they are *bona fide* purchasers of several portions of land carved out of the Suit Property. They argue that the Plaintiff sold the Suit Property to Kenneth Gikonyo who in turn sold the land to the Defendants.

3. Edwin Kaniaru Mungai, who the Plaintiff gave the power of attorney attended court and gave evidence on behalf of the Plaintiff. He stated that the Plaintiff discovered that there was a caution registered against the Suit Property when she wanted to transfer it. He produced a copy of the search which confirmed this. To the best of his knowledge, the Plaintiff who has the original title never sold the Suit Property to the Defendants. He only got to know Kenneth Gikonyo Mungai from the court papers filed in this case.

4. The 1st, 2nd and 15th Defendants gave evidence in court. The 1st Defendant testified that he learnt in August 2011 that there was a dispute when the Plaintiff's lawyers wrote to Kenneth Gikonyo telling them to vacate land as there was an outstanding balance of Kshs. 1 million. After receiving the demand letter the Defendants arranged a meeting with the Plaintiff's lawyer. They went to the firm of Munyalo Muli & Company Advocates and had a meeting in which they agreed to pay the balance of Kshs. 1 million to the Plaintiff to safeguard their interest in the Suit Property. It was his evidence that they bought a banker's cheque for Kshs. 425,000/= drawn in the name of the Plaintiff. Mr. Munyalo refused to accept the cheque stating it should have been written in his own name. The 1st Defendant said they took back the banker's cheque and distributed the money amongst the Defendants who had contributed the money.

5. It was his evidence that they bought the Suit Property from Kenneth Gikonyo Mungai who was represented by A. Burugu Advocates in the transaction. It was his evidence that they were shown the original title deed as well as a sale agreement entered into by the Plaintiff and Kenneth Gikonyo. On the strength of these documents, the Defendants bought the Suit Property.

6. He confirmed that Phibs Investments which issued ownership certificates to the Defendants was Mr. Gikonyo's company. It was selling the Suit Property and issued receipts to the Defendants. The receipts were issued in 2007 for various amounts ranging from 20,000/= to 296,000/=. He also confirmed that some Defendants bought their plots through sale agreements entered into with Phibs Investments. He stated that after full payment of the agreed purchase price, the buyers would be given ownership certificates by Mr. Gikonyo.

7. He confirmed that all the Defendants were occupying the land. Seven of them were living there while others had fenced their land. He conceded that there was no sale agreement entered into between the Plaintiff and the Defendants. He did not know whether the sale agreement between the Plaintiff and Mr. Kenneth Gikonyo was ever rescinded. He also conceded that the sale agreements that the Defendants entered into with Kenneth Gikonyo Mungai did not mention the Plaintiff.

8. The 15th Defendant confirmed in his evidence that indeed they registered the caution against the Suit Property because they bought the land from Kenneth Gikonyo. He confirmed that Phibs Investments belonged to Mr. Gikonyo and his wife. He also confirmed that he had never seen the Plaintiff and did not enter into any agreement with her. The 3rd defence witness also confirmed that they bought the Suit Property from Kenneth Gikonyo.

9. The issue for determination is whether the court ought to grant the orders sought in the plaint.

10. The court has considered the pleadings and the Plaintiff's submissions. The Defendants did not file written submissions.

11. It is not in dispute that the Suit Land is registered in the name of the Plaintiff. It is also not in dispute that the Defendants did not buy the land from the Plaintiff but they claim to have bought land from

Kenneth Gikonyo and were issued with ownership certificates by Phibs Investment.

12. The sale agreement entered into between the Plaintiff and Kenneth Gikonyo was not tendered in evidence. The contract entered into between the Plaintiff and Mr. Kenneth Gikonyo cannot be enforced by the Defendants who were not parties to it. While it is unfortunate that the Defendants paid money to Kenneth Gikonyo Mungai for the purchase of the Suit Property, this person was incapable of passing title to the Defendants over the Suit Property which is registered in the Plaintiff's name. Their claim can only lie against Kenneth Gikonyo and his land buying company which issued ownership certificates to the Defendants.

13. On a balance of probabilities the court finds that the Plaintiff has proved her case and grants prayers (a), (b), (c), (e). The Plaintiff did not submit on the issue of general damages and the court declines to grant prayer (d) sought in the Plaint.

Dated and delivered at Nairobi this 30th day of May 2018.

K. BOR

JUDGE

In the presence of: -

Mr. V. Owuor- Court Assistant

In the absence of both parties