



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC NO.336 OF 2014**

**(Formerly NYERI HCC NO.123 OF 2012)**

**ANDREW GACHINI GITONGA.....PLAINTIFF**

**-VERSUS-**

**STEPHEN NDIRAGU MURITHI....DEFENDANT**

**JUDGMENT**

1. This suit relates to the parcel of land known as L.R. No. Aguthi/Muruguru/400 (hereinafter referred to as the suit property).
2. The plaintiff herein, Andrew Gachini Gitonga, who is the registered proprietor of the suit property, blames the defendant for having wrongfully and unlawfully trespassed into the suit property hence interfering with his property rights.
3. The plaintiff laments that attempts to get the defendant to vacate the suit property have been futile.
4. For the foregoing reasons, the plaintiff seeks judgment against the defendant for:-
  - (a) **An order for eviction of the defendant, his family and properties from the suit properties plus damages for trespass;**
  - (b) **Costs of the suit;**
  - (c) **Interest on (a) and (b) above at court rates.**
5. Upon being served with summons to enter appearance, the defendant entered appearance and filed his statement of defence on 21st August, 2012 in which he contends that the plaintiff holds the suit property in trust for the rest of the family. The defendant accuses the plaintiff of having breached the pleaded trust and contends that he is not entitled to the orders sought.
6. When the matter came up for hearing, only the plaintiff adduced evidence in support of his case as the defendant, despite having been served with hearing notices, did not attend court to urge his case.
7. During the hearing, the plaintiff led evidence showing that he is the registered proprietor of the suit property. To that end he produced a certificate of search, Pexbt-1 attesting to that fact.

8. He reiterated his contention that the defendant is occupying a portion of his land measuring one acre without his consent and that attempts to get him vacate the portion have been futile. He produced the two demand letters his advocate issued to the defendant requiring him to vacate the suit property as Pexbt 2 and 3.

9. He denied the defendant's contention that he holds the suit property in trust for the defendant.

10. Explaining that owing to the defendant's unlawful occupation of a portion of the suit property he has suffered and continues to suffer loss (he would have planted cash crops like Macandamia from which he would be earning approximately Kshs.500,000/= per year and 2 million from the time he filed this suit), he urged the court to order the eviction of the defendant from the suit property, damages for trespass plus costs of the suit.

### **Analysis and determination**

11. From the pleadings filed in this matter, I find the sole issue for determination to be whether the plaintiff has made up a case for being granted the orders sought.

12. From the uncontroverted evidence of the plaintiff showing that he is the absolute registered proprietor of the suit property and the evidence showing that despite being required to vacate the suit property the defendant has refused to vacate, and in the absence of any evidence showing that the plaintiff holds the suit property in trust for the defendant, I am satisfied that the plaintiff has made up a case for being granted the orders sought. Consequently I allow the prayer for eviction.

13. As concerns the prayer for damages for trespass to land, although the plaintiff has not proved the actual loss suffered, on account of the defendant's unlawful conduct and cognisant of the fact that trespass to land is actionable per se, I award the plaintiff general damages of Kshs. 100,000/= on account of trespass to his land.

14. The plaintiff shall also have the costs of the suit and interest on the costs and the awarded damages from the date of this judgment until payment in full.

15. Orders accordingly.

**Dated, signed and delivered in open court at Nyeri this 30<sup>th</sup> day of May, 2018.**

**L N WAITHAKA**

**JUDGE**

Coram:

Mr. King'ori h/b for Mr. Wahome for the plaintiff

N/A for the defendant

Court assistant - Esther