



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 138 OF 2016**

**MARY NDUTA NGUGI ..... PLAINTIFF**

**VERSUS**

**BEATRICE NGELESA ..... 1<sup>ST</sup> DEFENDANT**

**JUDY CHELONGEI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In the plaint dated **14/9/2016** and filed in this suit on **15/9/2016**, the plaintiff prays for the following orders against the defendant:-

(a) **A declaration that the land comprised in the Title No. Kitale Municipality Block 3/1002 measuring 0.1286 hectares belongs to the plaintiff and the defendants have no interest therein at all.**

(b) **A declaration that the defendants are trespassers in part of the plaintiff's land comprised in Title No. Kitale Municipality Block 3/1002 and who should be ordered to vacate therefrom and failing which they be evicted and the structures demolished.**

(c) **General and exemplary damages for trespass.**

(d) **Cost.**

(e) **Interest.**

2. The plaintiff pleaded in the body of the plaint that she was the registered proprietor of the lease hold interest over land comprised in **Title No. Kitale Municipality Block 3/1002** measuring **0.1286 hectares** for a period of 99 years from **1/10/1993**, while the defendants have been in occupation of the land neighbouring the plaintiff's

3. However, sometime in **2016** the defendants encroached onto the plaintiff's portion of the land which prompted the plaintiff to request the Trans-Nzoia County Surveyor to visit the suit land for purpose of re-establishing the boundary/beacons between her land and that of the defendants.

4. The plaintiff avers that after receipt of the plaintiff's request the County Surveyor responded by informing the plaintiff that the survey would take place on **14/7/2016** at a cost of **Kshs.25,000/=** which amount the plaintiff paid. Thereafter, the exercise was carried out in the presence of the defendants and the beacons were properly put in place clearly marking the boundary between the plaintiff's land and the land occupied by the defendants.

5. However, sometime in mid-August, **2016**, the defendants removed the beacons marking the common boundary, trespassed onto the plaintiff's land and proceeded to build temporary corrugated iron sheet structures thereon.

6. Despite the plaintiff raising concerns and even lodging a complaint regarding the intrusion at the County Surveyor's office vide a letter dated **15/8/2016**, the defendants went on with the construction aforesaid and completed the structure. The plaintiff avers that the trespass and construction in the plaintiff's land has been confirmed by surveyors vide a letter dated **16/8/2016**. In his report the surveyor has also confirmed that the portion which has been forcefully and intentionally taken by the defendants from the plaintiff measures **0.0628 hectares**.

**The Joint Defence of the Defendants**

7. The defendants filed statement of defence in this suit on **4/11/2016** denying the claim. The plaintiff filed a reply to defence dated

**28/11/2016.** However the defendants did not attend court or call evidence in aid of their defence when this suit came up for hearing on **31/7/2018** despite the fact that they had notice of the hearing date. The hearing proceeded *ex parte*.

**8.** The plaintiff gave evidence in support of her claim. She substantially reiterated the matters raised in the plaint. She produced a copy of the allotment letter issued by the Commissioner of Land as **P. Exh 1**, the lease as **P.Exh 2**, the Certificate of Lease as **P. Exh 3** and the surveyors letters dated **30/6/16** and **1/7/2016** as **P. Exh 4** and **P. Exh 5** respectively. Photographs of the corrugated sheet structures said to have been erected by the defendants on the land were also produced. The plaintiff reiterated what is contained in her plaint and her witness statement. She averred that the 1<sup>st</sup> defendant resides in Nairobi while the 2<sup>nd</sup> defendant resides on the land neighbouring the plaintiff's. However the plaintiff said she knows both defendants well. She confirmed that her beacons were fixed in the ground on 15/8/2016 but they were uprooted and the iron sheet structure erected on her land. Thereafter the County Surveyor came to the site and in the presence of the 1<sup>st</sup> defendant re-established the beacons. According to the plaintiff the defendants have put tenants into possession of the structures they have built on her land.

**9. PW2, Emmanuel Mutange**, a Surveyor from the Ministry of Lands based in Kitale testified in favour of the plaintiff. He visited the site and was involved in the replacing of the beacons on **14/7/2016** after they had been uprooted. He received a second complaint in August, 2016 from the plaintiff. He visited the site and confirmed that the beacons had been uprooted and an iron sheet structure erected partly on the plaintiff's land and partly on the defendant's land.

**10. PW3, Simiyu Edmund Davies Wekesa**, a Land Surveyor, also testified for the plaintiff. He gave his qualifications. He was approached by the plaintiff to ascertain the occupation of Plot No. 1002. He visited the ground and used a cadastral plan number FR566/66 supplied by the Director of Surveys which he produced as **P. Exh 11**. He confirmed that what the plaintiff is occupying on the ground is half of the plot represented in the plan. He also confirmed that some new iron sheet structures occupied half of the plot. The size of the plaintiff's land is **0.1286** and the part that had been encroached upon by the defendants' structures was **0.658 Ha**. He produced his report confirming the foregoing information as **P. Exh 10**.

**11.** As I stated before the defendants never attended court to give evidence on their defence. The hearing proceeded *ex parte*. There is therefore no evidence to counter the plaintiff's. Be that as it may, I find the plaintiff's evidence to be strong. She has established by way of title documents and a surveyor's report and oral evidence that she is the lessee to the suit land known as Kitale Municipality Block 3/1002 and that the defendants have trespassed thereon and erected illegal structures.

**12.** I therefore find that the plaintiff has established her claim against the defendants on a balance of probabilities and I enter judgment in her favour against the defendants jointly and severally. I issue the following orders:

**(a) An order of declaration declaring that the land comprised in the Title No. Kitale Municipality Block 3/1002 measuring 0.1286 Hectares belongs to the plaintiff and the defendants have no interest therein at all.**

**(b) An order of declaration declaring that the defendants are trespassers in part of the plaintiff's land comprised in Title No. Kitale Municipality Block 3/1002 and who should be ordered to vacate there from and failing which they be evicted and their structures demolished.**

**(c) An order that the defendants shall pay to the plaintiff Kshs. 50,000/= being general damages for trespass.**

**(d) An order that the defendants shall pay to the plaintiff Kshs. 50,000/= being exemplary damages for trespass.**

**(e) An order that the defendants shall bear the costs of the suit.**

**(f) The amounts in (c) and (d) above shall bear interest from date of judgment at court rates till settled in full.**

**Dated, signed and delivered at Kitale on this 25<sup>th</sup> day of September, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**25/9/2018**

Coram:

Before- Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kiarie for the plaintiff (Plaintiff absent)

N/A for the defendant (Defendant absent)

**COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**25/9/18**