

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 180 OF 2012

ROSELYNE OTAGO.....PLAINTIFF

VERSUS

JONATHAN NYANGAU.....DEFENDANT

JUDGMENT

1. The Plaintiff has averred in her Complaint dated 24th May, 2012 that she is the registered owner of land known as Mavoko Town Block 3 (WASWA) 4032 whereas the Defendant is the registered owner of Plot No. 4033; that the Defendant has trespassed on Plot Number 4032 (*the suit land*) and that the Machakos District Surveyor confirmed the said trespass.

2. The Plaintiff is seeking for an order of permanent injunction restraining the Defendant from dealing with the suit land and for a mandatory injunction compelling the Defendant to remove all structures standing on the suit land. Although the Defendant entered appearance through the firm of P.N. Marigori & Co. Advocates, he did not file a Defence. The matter proceeded for hearing in the absence of the Defendant.

3. The Plaintiff, PW1, informed the court that she was a member of the Water and Sewerage Welfare Association (WASWA) whose members comprised mainly of staff of the defunct Water and Sewerage Department of the City Council of Nairobi; that the suit land is one of the sub-divisions of the larger parcel of land purchased by Water and Sewerage Welfare Association (WASWA) and that she was allocated Plot No. 4032 measuring 0.038 Ha after paying Kshs. 41,000.

4. It was the evidence of PW1 that in April, 2001, members were taken to the ground and shown their respective plots; that she was issued with the Title Deed for Plot No. 4032 and that when she visited the plot in the year 2007, she found the Defendant, who owns Plot No. 4033, had encroached on her land.

5. It was the evidence of PW1 that the Surveyor confirmed that the Defendant had indeed encroached on the suit land. PW1 produced in evidence the Title Deed that was issued in her favour on 4th March, 2002 for Mavoko Town Block 3 (WASWA) 4032 and the Surveyor's report dated 19th July, 2011.

6. The Plaintiff's advocate submitted that under Section 24(a) of the Land Registration Act, 2012, the registration of a person as the proprietor of land vests in that person the absolute ownership of the land; that the Plaintiff as the absolute owner of the suit land is entitled to enjoy the rights and privileges of her land and that the Plaintiff should be allowed.

7. The evidence before me shows that the Plaintiff was registered as the proprietor of land known as Mavoko Town Block 3 (WASWA)/4032 on 4th March, 2002. The acquisition of the said land was pursuant to the Plaintiff's membership in Water and Sewerage Welfare Association (WASWA) Development Society where she paid Kshs. 41,000.

8. Considering that in his letter dated 19th July, 2011, the District Surveyor confirmed that the proprietor of parcel of land number 4033 (*the Defendant*) had encroached on parcel number 4032 (*the Plaintiff's land*), and in the absence of evidence from the Defendant to the contrary, I find that the Plaintiff has proved her case on a balance of probabilities.

9. For those reasons, I allow the Complaint dated 24th May, 2012 as follows:

a. A permanent injunction do issue restraining the Defendant by himself, his agents, servants, workmen, fundis or otherwise from trespassing upon, dealing in or with selling, erecting any structure upon, taking away any soil, rock or sediment from or otherwise howsoever interfering with the Plaintiff's parcel of land Mavoko Town Block 3/WASWA/4032.

b. A mandatory injunction do issue compelling the Defendant, at his expense to forthwith remove all structures, debris construction stones, steel rods, building sand and other materials he had deposited/stored, or placed upon the Plaintiff's parcel of land Mavoko Town Block 3 (WASWA)/4032 and to restore to their original state.

c. Costs of the suit to be paid by the Defendant.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 14TH DAY OF DECEMBER, 2018.

O.A. ANGOTE

JUDGE