



**REPUBLIC OF KENYA**

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

**CASE No. 7 OF 2012**

**MARY WANJIKU NDICHU ..... PLAINTIFF**

**VERSUS**

**ALLAN KIMANI ..... DEFENDANT**

**JUDGMENT**

***(A suit seeking vacant possession and an exhumation order; the plaintiff being the registered owner of the subject parcel of land accused the defendant of trespass and burying a body on the land; plaintiff's case proven; defendant ordered to exhume the body and hand vacant possession)***

1. This suit was filed on 9<sup>th</sup> October 2012 through plaint dated the same date. It is averred in the plaint that the plaintiff is the registered proprietor of all that parcel of land known as Naivasha/Mwachiringiri Block 4/3567. That sometime in the year 2012 the defendant entered on to the plot without the plaintiff's consent, erected some buildings and structures thereon, interred a body on it and is also cultivating it. The plaintiff therefore prays for an eviction order against the defendant and an order that the remains interred on the land be exhumed.

2. Upon being served with summons the defendant entered appearance and filed a defence. The defendant denied that the plaintiff is the registered owner of the plot and averred that any title that the plaintiff is holding was obtained through fraud. The defendant further averred that he settled on the suit property in the year 1987 and that he has developed it without any interruption for a period of 25 years. That he stands to suffer irreparable harm as he has built a permanent six roomed house on the plot, planted many trees on it and even buried his son on it. He therefore urged the court to dismiss the suit.

3. When the matter came up for hearing there was no appearance for the defendant. Being satisfied that the defendant's advocates on record had been duly served with a hearing notice, I allowed the hearing to proceed.

4. Only the plaintiff testified in support of her case. Her testimony was that she owns the parcel of land known as Naivasha/Mwachiringiri Block 4/3587. She produced a copy of the title deed as Plaintiff's Exhibit No.1. She stated that the defendant entered her said plot without a valid reason and constructed on it. That she wrote to him a demand letter through Mburu F.I. & Co. Advocates dated 22/2/2012. She produced a copy of the letter as Plaintiff's Exhibit No. 2. The defendant neither complied with the demand nor vacated.

5. At the conclusion of the plaintiff's testimony the plaintiff's case was closed. Counsel for the plaintiff proceeded to submit that the plaintiff as the registered owner of Naivasha/Mwachiringiri Block 4/3587 is the absolute and beneficial owner thereof. That the defendant had no right to trespass on plaintiff's said parcel of land.

6. I have considered the plaintiff's case as pleaded in the plaint, the defendant's case as pleaded in the defence, evidence tendered and submissions. The plaintiff has shown that she is the owner of the parcel of land known as Naivasha/Mwichiringiri Block 4/3587. The plaintiff also adduced uncontroverted evidence that the defendant entered the parcel of land without the plaintiff's consent and constructed on it. The allegations of trespass and construction are corroborated by paragraphs 3 and 5 of the statement of defence.

As already stated, the defendant did not offer any testimony to challenge the plaintiff's case. I therefore find and hold that the plaintiff is the registered owner of all that parcel of land known as Naivasha/Mwichiringiri Block 4/3587. I further find and hold that the defendant indeed entered the said parcel of land and constructed thereon without the plaintiff's consent.

7. As regards the averment in the plaint that the defendant had interred a body on the suit property, the plaintiff did not tender any evidence in that regard. Similarly, counsel for the plaintiff did not make any submissions as regards the allegation of interment. Nevertheless, the defendant has at paragraph 5 of his statement of defence admitted the claim by the plaintiff that he interred a body on the plot.

8. In the end, I find that the plaintiff has proven her case on a balance of probabilities. I therefore enter judgment in favour of the plaintiff and make the following orders:

(a) The defendant, his servants/agents and/or any other persons acting under him are hereby ordered to vacate and hand vacant possession in respect of the parcel of land known as Naivasha/Mwichiringiri Block 4/3567 to the plaintiff within 60 (sixty) days from the date of delivery of this judgment.

(b) The defendant, his servants, agents and/or any other persons acting under him are hereby ordered to exhume the body interred by the defendant on the parcel of land known as Naivasha/Mwichiringiri Block 4/3567 within 60 (sixty) days from the date of delivery of this judgment and bury it elsewhere. The County Public Health Officer, Nakuru County to supervise the exhumation process.

(c) In default of the defendant complying with orders number (a) and (b) above within the stated period, the plaintiff shall be at liberty to enforce compliance under the supervision of the County Public Health Officer, Nakuru County and with the aid of the police.

(d) The plaintiff is awarded costs of the suit and interest thereon.

9. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 30<sup>th</sup> day of May 2017.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr. Geke holding brief for Mr. Kimani for the plaintiff

No appearance for the defendant

Court Assistant: Gichaba