



**REPUBLIC OF KENYA**

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

**ELC CIVIL SUIT NO. 189 OF 2014**

**ALICE WANGECHI GICHUKI AND JAMES JACK MWANGI GICHUKI**

**(SUING AS ADMINISTRATORS OF THE ESTATE OF**

**GEORGE KIMERIA NDUNG’U GICHUKI).....PLAINTIFFS**

**=VERSUS=**

**GEORGE MAGUTI.....DEFENDANT**

**J U D G E M E N T**

1. The late George Kimeria Ndung’u Gichuki [hereinafter referred to as **“the deceased”**] initiated this suit on 20/2/2014 through a plaint dated 14/2/2014. He contended that he was the registered proprietor of Land Reference Number 209/10921 situated in Villa Franca, Nairobi, and comprised in Grant Number IR 144199 registered on 18/3/2013 as IR 144199/1 (hereinafter referred to as **“the suit property”**). He averred that he was allotted the suit property by the Government of Kenya in 1987 through a letter of allotment dated 1/12/1987 and he had always paid annual rent and land rates to relevant authorities.

2. He contended that in or about April 2008, the defendant encroached upon the suit property and illegally constructed thereon shanty iron sheet structures for letting to tenants. He further contended that despite several entreaties and demands through the area chief, the defendant refused to vacate the suit property. It is this conduct on part of the defendant which triggered the suit herein.

3. Through the suit, the deceased sought a mandatory injunction directing the defendant to vacate and surrender the suit property and to demolish all the shanty structures erected on the suit property. Second, the plaintiff sought an eviction order against the defendant. Third, he sought costs of the suit and interest thereon.

4. The suit proceeded ex-parte before Honourable Justice Mutungi on 21/7/2015. During the hearing, the deceased gave oral evidence and also adopted his written statement as part of his evidence in chief. At the close of the hearing on, the Honorable Justice Mutungi directed that a surveyor’s report be compiled and furnished to the court to form part of the court record. Subsequently, on 01/10/2015, the deceased’s advocates presented a Report dated 27/8/2015 prepared by M/s Boma Surveys Limited. Subsequently, the Hon. Mutungi was transferred from Milimani Law Courts (ELC). The plaintiff, George Kimeria Ndung’u Gichuki died on 18/12/2015.

5. This matter first came before me on 28/3/2017 by way of a Notice of Motion dated 12/8/2016 seeking a substitution order bringing on board Alice Wangechi Gichuki and James Jack Mwangi Gichuki in place of the late George Kimeria Ndung’u Gichuki who had died on 18/12/2015. The Application was uncontested and it was allowed. Alice Wangechi Gichuki and James Jack Mwangi Gichuki

(Administrators of the Estate of the Late George Kimeria Ndung'u Gichuki) are therefore the current plaintiffs in this suit. They have continued with this suit on behalf of the Estate of the late George Kimeria Ndung'u Gichuki.

6. The suit herein is undefended. The Honorable Mutungi proceeded to hear the suit ex-parte after he was satisfied that the defendant had been served with summons to enter appearance and had defaulted to do so. On taking over this matter, I directed that the defendant be served with notice to attend subsequent court proceedings. On 2/5/2017 the court reserved a date for judgment.

7. I have looked at the evidence presented to the court by the deceased. He testified that he was the registered proprietor of the suit property. He further testified that the defendant had encroached onto the suit property and had constructed unauthorized structures on the suit property and let them out to tenants. He produced copies of Grant Number IR 144199. He presented to the court the original Grant for perusal by the court. He also produced Letter of Allotment dated 1/12/1987, Receipt dated 8/11/1988, Deed Plan No. 152609 dated 22/5/2012, Rent Invoice dated 11/3/2013, Rent Payment Slips, Photographs of the structures on the suit property and copy of the demand letter dated 9/12/2013. The deceased's evidence was uncontroverted.

8. The right to acquire and own property is secured and protected under Article 40 of the Constitution of Kenya 2010. It was similarly protected within the framework of the repealed Constitution. Neither the state nor a private individual is permitted to arbitrarily deprive a person of private property. Similarly, the proprietary interests of a registered proprietor of land are protected by Section 24 of the Land Registration Act which provides as follows:-

**“24 Subject to this Act-**

**a. the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and**

**b. the registration of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.**

9. The rights of a proprietor of land are further protected by Section 25 (1) of the Land Registration Act which provides as follows:-

**“25 (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with the privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject:-**

**a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and**

**b. to such liabilities, rights and interests as affect the same and are declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register.**

10. I have carefully considered the deceased's uncontroverted evidence on record. I have also considered the prevailing constitutional and statutory framework applicable to this case. In the absence of any evidence to challenge the deceased's title to the suit property, there would be no basis for doubting that the Estate of the Late George Kimeria Ndung'u Gichuki has proved its case against the defendant on a balance of probability. I accordingly enter judgment in favour of the plaintiffs against the defendant and his agents/servants/tenants in the following terms:

a. The defendant, his agents, servants and/or tenants shall vacate and surrender Land Reference Number 209/10921 comprised in Grant Number 144199 within sixty (60) days from the date of service of the decree herein.

b. In default of (a) above, an eviction order shall issue to be enforced under the supervision of the Area Police Officer Commanding Police Division.

c. The defendant shall demolish and remove all the illegal structures erected on the suit property within sixty five (65) days from the date of service of the decree.

d. The plaintiffs shall have costs of this suit.

**Dated, signed and delivered at Nairobi on this 23rd day of June ,2017**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

.....Advocate for the Plaintiff

.....Advocate for the Defendants

.....Court clerk