



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 56 OF 2013

DR. FERDINARD NANGOLE WANJALA1ST PLAINTIFF

LILIAN ANGWENYI WANJALA2ND PLAINTIFF

VERSUS

STEPHEN MUSYOKA NGEIDEFENDANT

JUDGMENT

1. In the Plaint dated 6th September, 2011, the Plaintiffs averred that they are the owners of a plot marked as “C” measuring 50 x 100 feet which was hived from plot number 1504/07 situate in Mlolongo.
2. According to the Plaintiffs, before the Vendor could transfer the suit land to them, she died; that they have developed the suit land; that on 17th July, 2011, the Defendant encroached and trespassed on the suit land and that a permanent injunction should issue.
3. Although the Defendant was served with the Summons to Enter Appearance and the Plaint, he neither entered appearance nor filed a Defence. The matter proceeded for formal proof.
4. The 1st Plaintiff, PW1, informed the court that he bought the suit property together with his wife vide an agreement dated 6th July, 2007 and 29th August, 2008.
5. PW1 informed the court that the plot they bought was part of the land known as 1504/7; that the Vendor had sub-divided the land into several portions and that after the death of the Vendor, the sub-division and subsequent processing of the titles stalled.
6. According to PW1, on 17th July, 2011, he was informed that a stranger had encroached on his land and proceeded with construction.
7. PW1 produced in evidence a copy of the Sale Agreement, a copy of the title document, a bank deposit slip, the demand letter and proceedings in High Court Succession No. 1754 of 2009.
8. The Plaintiffs’ advocate filed written submissions which I have considered.
9. The 1st Plaintiff produced in evidence the Agreement of Sale dated 29th August, 2008. The said Agreement for Sale shows that the Plaintiffs entered into an Agreement with one Margaret Wamaitha Humphrey for sale of a plot measuring 50 x 100 feet “*apportioned from L.R. No. 1504/7.*”

10. According to the said Sale Agreement, the Plaintiffs were required to pay to the Vendor a deposit of Kshs. 1,000,000 upon execution of the agreement, with the balance of Kshs. 1,300,000 to be paid in installments. The last installment of Kshs. 400,000 was to be paid upon the issuance of a Title Deed in favour of the Plaintiffs.

11. Before the completion of the sale, the Vendor passed on. However, the Plaintiffs had already paid the deposit of Kshs. 1,000,000 and taken possession of the land.

12. PW1 produced in evidence an order that was issued in Nairobi P&A No. 1754 of 2009 in which the court restrained any person from dealing or interfering with the moveable and immovable assets of the late Margaret Wamaitha Humphrey (the deceased) until the determination of the matter.

13. The court further directed the firm of A.F. Gross advocates not to release the original title deed in respect of L.R. No 1504/20 Mlolongo and not to interfere with the land until further orders of the court.

14. It is not clear to this court the current position of the Succession Cause.

15. However, it is clear that the Plaintiffs entered into an agreement of sale with the deceased and took possession of the land after paying a deposit of Kshs. 1,000,000.

16. Considering that the issue of the transfer of the suit land in favour of the Plaintiffs can only be done after the Letters of Grant Intestate have been confirmed, an order of injunction restraining the Defendant or any other person from interfering with the suit property should issue.

17. However, an award for general damages for trespass, loss of business and user as prayed in the Plaint cannot issue considering that no evidence was led as to the payable amount.

18. In the circumstances, I allow the Plaint dated 6th September, 2011 in the following terms:

a. A permanent injunction be and is hereby issued restraining the Defendant, himself, his agents, servants and or any other persons whomsoever from encroaching upon, trespassing onto, remaining on or in any way howsoever interfering with all that plot marked "C" measuring 50 x 100 apportioned from Mlolongo 1504/07 belonging to the Plaintiffs.

b. An order be and is hereby issued directing the Defendant to demolish and remove all or any structures he has erected on plot marked "C" in the sub-division plan as apportioned from L.R No. 1504 Mlolongo, failure of which the Plaintiffs do demolish the said structure(s) at the Defendant's expense.

c. The Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 16TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE