



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 62 OF 2010

1. ANNUNCIATA NTHAMBI MWONGELA

2. ROBERTY KYALLO

3. MARY CONCEPTA NDUKU MUTIE.....PLAINTIFFS

(Suing as administrators for the estate to the late Henry Mutie Mwangela)

=VERSUS=

1. WILLIAM ABUKA

2. WASHINGTON OMONDI

3. DORCUS TABITHA ADHIAMBO.....DEFENDANTS

J U D G M E N T

1. The Plaintiffs are administrators of and beneficiaries to the estate of the late Henry Mutie Mwangela. They brought this suit in their representative capacity as administrators of the estate. Through a plaint dated 16/2/2010, they contend that Land Reference Number 209/12320 comprised in Grant Number IR 82498 (hereinafter referred to as **“the suit property”**) belongs to the Late Henry Mutie Mwangela (hereinafter referred to as **“the deceased”**). They further contend that around the Year 2005, the Defendants and their agents invaded and trespassed onto the suit property. This trespass by the defendants is what triggered the present suit. The Plaintiffs seek against the Defendants, inter alia, an order directing the defendants to vacate the suit property.

2. In a statement of defence dated 27/3/2010 and filed in court on 30/3/2010, the 1st and 3rd Defendants contest the allegation that the Plaintiffs are administrators of the estate of the deceased. They also contest the capacity in which they have been sued. At Paragraph 6 of the defence, the 1st and 3rd defendants deny the allegation that they invaded and trespassed onto the suit property. They deny being trespassers and contend that any occupation of the suit property by third parties is pursuant to rights acquired under the doctrine of adverse possession. The 2nd Defendant did not file a statement of defence.

3. This suit came up for hearing on 20/3/2017. When the matter was called out for hearing, only the Plaintiffs and their advocates were present. Having satisfied myself that proper hearing notice had been served, I allowed the hearing to proceed ex parte. The 1st Plaintiff, Annunciata Nthambi Mwangela, testified on behalf of the Plaintiffs.

4. In her sworn testimony, the 1st Plaintiff, Annunciata Nthambi Mwangela, adopted her witness statement dated 20/5/2015 as her evidence in chief. She testified that the Plaintiffs are administrators of

the Estate of the Late Henry Mutie Mwangela. She produced a Certificate of Confirmation of Grant issued by the High Court of Kenya at Nairobi on 28/9/2009 together with a Grant of Letters of Administration (Intestate) issued by the same court on 28/1/2009, both relating to the Estate of the Late Henry Mutie Mwangela **[Exhibit No. 1]**. PW1 further testified that the late Henry Mutie Mwangela is the registered proprietor of Land Reference Number 209/12320 comprised in Grant Number IR 82498. She produced a Grant Number IR 82498 registered on 23/12/1999 as IR 82498/1 bearing Henry Mutie Mwangela as Grantee of the suit property for a leasehold interest of 99 years from 1/6/1994 **[Exhibit No. 2]**.

5. The 1st Plaintiff further produced a Letter dated 27/4/2009 from the then Provincial Director of Gender, Children & Social Development, Nairobi Province, indicating that William Abuka, Washington Omondi and Dorcas Tabitha Adhiambo were the chairman, secretary and treasurer of Faith Community Care Centre, a group registered in the Office of the Nairobi Provincial Director of Gender, Children & Social Development **[Exhibit No. 3]**. She also produced a restraining court order issued against the Defendants in this suit on 17/2/2012 **(Exhibit 4)**. Lastly, she produced photographs of makeshift iron sheet structures standing on the suit property **(Exhibit 5)**. She asked the court to grant the Plaintiffs judgment as prayed in the plaint.

6. In her brief oral submissions, counsel for the Plaintiffs, Ms Koki Mbulu, adopted the case summary and skeletal arguments filed in court on 4/6/2015. She submitted that title by adverse possession is grounded on certain mandatory legal requirements. She contended that those requirements had not been met by the Defendants.

7. I have carefully considered the pleadings and evidence in this suit. I have also considered submissions by counsel for the Plaintiffs. Lastly, I have considered the applicable legal framework. The Plaintiffs have presented evidence to demonstrate that the suit property belongs to the late Henry Mutie Mwangela and that they are the legitimate administrators of the estate of the late Henry Mutie Mwangela. They have also produced evidence to demonstrate that indeed the suit property was invaded by the Defendants who subsequently erected makeshift structures thereon.

8. The 1st and 3rd Defendants denied trespassing on the suit property. They contended that any occupation of the suit property by third parties is pursuant to the doctrine of adverse possession. The 2nd Defendant did not put forth any defence. The defendants did not adduce any evidence to challenge the plaintiffs' claim. Similarly, they did not evidentially support the defence of adverse possession by the unnamed third parties.

9. 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 private property. The proprietary interest 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.

10. 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 and 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.

11. Having considered the uncontroverted evidence presented to the court and the applicable legal framework, I am satisfied that the Plaintiffs have proved their case against the Defendants on a balance of probabilities. I accordingly enter judgment in favour of the Plaintiffs as prayed in the Plaint. The Defendants shall vacate the suit property Land Reference Number 209/12320 comprised in Grant Number IR 82498 within 60 days from today. In default, an eviction order shall issue against them and the eviction shall be carried out under the supervision of the Area Officer Commanding Police Division.

Dated, signed and delivered at Nairobi on this 12th day of June 2017.

B. M. EBOSO

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendants

.....Court clerk