



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 172 OF 2012

ADDAH EMMIE ODERA.....1ST PLAINTIFF

MARGARET ADHIAMBO ROYOLA.....2ND PLAINTIFF

VERSUS

JAMES MAINA NJUIRIDEFENDANT

JUDGEMENT

1. The Plaintiffs who jointly own the parcel of land known as L. R. No. 209/10884 situated in the city of Nairobi (“the Suit Property”) seek a permanent injunction to restrain the Defendant or his agents from dealing with the Suit Property. They also seek an order of eviction against the Defendant and a mandatory injunction directing the Defendant to demolish the illegal structures he has erected on the Suit Property.
2. In the plaint filed in court on 30th March 2012, the Plaintiffs aver that the Suit Property was transferred to them on 9th October 1998. Not being residents of Nairobi, they seldom visited the Suit Property after purchasing it.
3. Sometime in 2007 the Plaintiffs were shocked to find that some temporary residential structures and an unfinished flat had been erected on the Suit Property. They reported this to the authorities and were assured of intervention to protect their property.
4. When the Plaintiffs next visited the Suit Property they found that the Defendant had constructed a block of flats and other rental premises on the Suit Property prompting the Plaintiffs to file this suit.
5. Attempts to serve the Defendant proved futile as his tenants on the Suit Property informed the process server that he never visits the property.
7. Following an application to effect service by way of advertisement in the newspaper which the court allowed, the Defendant was served through an advertisement placed in *The Star* of 27th August 2013.
7. Justice Mutungi had directed on 3rd June 2013 that the advertisement was to be carried once in *The Standard* newspaper during a weekday.
8. The court entered interlocutory judgment for the Plaintiffs on 18th September 2013. The case was set down for hearing on 29th May 2015 and 17th October 2016 but did not proceed. It was heard on 27th February 2017.
9. The 1st Plaintiff testified in court. She informed the Court that the 2nd Plaintiff with whom she owns

the Suit Property resides in U.S.A. She adopted her witness statement as her evidence. She produced the original title over the Suit Property, deed plan no. 151966 and survey plan No. 199/49 showing the location of the Suit Property.

10. She told the court that the Defendant has possession of the Suit Property and has erected structures on it. When the Plaintiffs attempted to go to their land they were chased away with pangas. She urged the court to grant eviction orders, an order for demolition and removal of the debris as well as the costs of this suit.

11. The Plaintiffs' counsel filed written submissions. He argued that the suit was based on trespass and that the Defendant having failed to enter appearance and file defence, interlocutory judgment was entered for the Plaintiffs and that the Plaintiffs had demonstrated in their evidence that they are the owners of the Suit Property. He submitted that the Plaintiffs had made out a case to warrant issuance of the orders sought.

12. The court has considered the evidence of the 1st Plaintiff and looked at the documents tendered in evidence. The Suit Property was transferred to the Plaintiffs on 9/10/1998 as joint owners for the consideration of Kshs. 600,000/=. The court has also looked at the survey plan showing the location of the Suit Property and is satisfied that the Plaintiffs are the registered owners of the Suit Property and are entitled to enjoy their rights over the Suit Property granted by the Registration of Titles Act (now repealed).

13. The Plaintiffs relied on the case of **Lucy Wangui Gachara v Minudi Okemba Lore [2015]** eKLR in which the Court of Appeal stated that the principles on which the courts will grant an injunction are well known. The court cited the case of **Nguruman Limited v Jan Bonde Nielsen & 2 Others** CA No. 77 of 2012 in which the court had stated that in an interlocutory injunction application, the applicant has to satisfy the triple requirements of a prima facie case, irreparable injury if the order is not granted and show that the balance of convenience was in his favour. The court then observed thus:

“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent.....”

14. The court is satisfied that the Plaintiffs have met the triple requirements for the grant of a permanent injunction.

15. The court enters judgment for the Plaintiffs as prayed in the plaint.

Dated and delivered at Nairobi this 10th day of July 2017.

K. BOR

JUDGE

In the presence of: -

No appearance for the Plaintiffs

No appearance for the Defendant

Mr. V. Owuor- Court Assistant