

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 429 OF 2012

NANCY WAIRIMU KARENJU.....PLAINTIFF

VERSUS

LUCIA WANJIKU KAMAU.....DEFENDANT

JUDGEMENT

1. The Plaintiff is one of the administrators of the estate of the late Paul Karenju Wambugu (deceased) who was a lessee of LR No Nairobi/ Block 117/53(suitland). The deceased died on 9th November 2002. The process of succession in respect of the estate of the deceased was carried out vide Nairobi High Court Succession Cause No. 1756 of 2003. Grant of letters of administration were issued on 27th August 2003 and the same were confirmed on 10th March 2010.

2. The Plaintiff was registered as owner of the suitland by way of transmission. A certificate of lease was issued in her favour on 7th June 2010. The Plaintiff thereafter filed this suit against the defendant seeking the defendant's eviction from the suitland.

3. The defendant who had filed defence to the Plaintiff's claim was duly served with a hearing notice which was through her advocate but on the hearing day, neither the defendant nor her advocate was in court. The hearing therefore proceeded ex-parte. The Plaintiff testified that the suitland falls in between two properties owned by the defendant.

4. In the year 2002, the defendant fenced her properties including the suitland and she proceeded to erect structures on the suitland. The Plaintiff has been demanding that the defendant vacates the suitland but the defendant has refused to move out of the land. The Plaintiff produced a Grant and confirmed Grant as Plaintiff exhibit 1 and 2 respectively. Also produced was an extract from Ministry of Lands showing that the suit land was in the name of the deceased before he died. This was exhibit 3. The Plaintiff also produced a copy of lease in the name of the deceased.

5. After the demise of the deceased, the suitland was registered in the name of Plaintiff as per a copy of certificate of lease produced as exhibit 4. An extract from the Ministry of Lands was produced as exhibit 6 and it shows that the suitland is registered in the Plaintiff's name. The evidence of the Plaintiff is uncontroverted. The title held by the Plaintiff has no encumbrances or any inhibitions. Section 26 of the Land Registration Act is clear that a certificate of title issued upon transfer or transmission shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner. In the instant case, the Plaintiff has proved that she is the owner of the suitland having inherited it from the deceased through transmission. I find that the Plaintiff has proved that she is the owner of the suitland on a balance of probabilities. The defendant has no business remaining on the same. I therefore allow the Plaintiff's claim in terms of prayer (a) and (c) of the Plaint. There was no basis laid for grant of mesne profits. The prayer for mesne profits is therefore rejected.

Dated, Signed and delivered at **Nairobi** on this **28th** day of **September, 2017**.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date and time for delivery of Judgement.

Court Assistant: Hilda

E.O.OBAGA

JUDGE