



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 329 OF 2014

CHARLES GATHARI KANIARU.....PLAINTIFF

VERSUS

PASTOR FRANCIS N. MUROKI1ST DEFENDANT

ISAAC KAMAU MWAURA..... 2ND DEFENDANT

PASTOR JOSHUA WAMBUA.....3RD DEFENDANT

GEORGE M. WACHIRA..... 4TH DEFENDANT

(All Operating As Good Hope Christian Centre)

NAIROBI CITY COUNTY.....5TH DEFENDANT

JUDGEMENT

1. The Plaintiff claims to have been allocated the parcel of land known as L.R. No. 12062/885(viously known as plot no. 293 Kariobangi South River Bank) by the Nairobi City County on 30/5/1996 (“the Suit Property”). The 1st to 4th Defendants are adults who operate the Good Hope Christian Centre in Kariobangi. They operate the Christian mission on L.R. No. 12062/884 previously known as plot Number 272 in Kariobangi South River Bank which is situated next to the Suit Property.
2. The Plaintiff claims that sometime in 2006 the 1st to 4th Defendants while running the Good Hope Christian Centre in Kariobangi unlawfully trespassed and encroached onto the Plaintiffs Suit Property. Further, that despite demands to cease the illegal acts, the Defendants have continued with the trespass.
3. The Plaintiff’s complaint against the 5th Defendant is that as the allocating authority it has failed to stop the trespass and encroachment on the Plaintiff’s land and to replace the beacons on the Suit Property.
4. In the Plaint filed in court on 19/3/2014, the Plaintiff seeks an order to evict the 1st to 4th Defendants or their agents from the Suit Property and an order to direct the 5th Defendant to enforce its byelaws against the 1st to 4th Defendants and to replace the beacons on the Suit Property. He also seeks costs and general damages for trespass.
5. In their defence, the 1st to 4th Defendants denied the Plaintiffs claims. They argue that the plaint is vague and defective since they do not operate as Good Hope Christian Centre.

6. The Defendants filed their list of documents. The 1st Defendant states that Ruth George Hope College Company was a registered organization under the Business Names Act and that it owns plot numbers 156 and 272 in Kariobangi South River Bank. They deny encroaching or trespassing onto the Plaintiff's land.

7. The letter of allotment dated 31/8/1992 is addressed to Ruth George Hope College Company. It shows that plot number 272 measuring 0.2 hectares was being allotted and that the land is to be used for educational purposes. The Defendants attached the receipts for the payment of Kshs. 86,000 made to the Nairobi City Commission on 31/8/1992. The receipt was issued to GeorgeRuth Nursery School. The rates payment demands are issued in the name of GeorgeRuth Good Hope Nursery School for plot number 156 Kariobangi River Bank.

8. The Plaintiff did not amend his plaint to reflect the correct business name. Pursuant to Order 1 Rule 9 of the Civil Procedure Rules, no suit shall be defeated by reason of the misjoinder or non-joinder of parties.

9. At the hearing of this suit, Mr. Mokuia counsel for the 5th Defendant indicated to the court that he was not calling any witness. He also confirmed that the 5th Defendant was agreeable to the Plaintiff paying the necessary fees for replacement of the beacons on the Suit Property. The hearing therefore proceeded against the 1st to 4th Defendants.

10. The Plaintiff testified. He relied on his witness statement dated 19/3/2017 together with the documents filed in court on the same date. He produced a copy of the letter of allotment dated 30/5/1996 together with the lease over the Suit Property issued by the 5th Defendant for 99 years from 1/1/1968. The lease states that the Suit Property measures 0.0828 of an acre. The lease was duly registered. He also produced the rates demand notes issued by the 5th Defendant which he had paid for the Suit Property as well as the various correspondence addressed to the Defendants on the encroachment on his land.

11. He produced the topo survey which shows the illegal structures erected by the 1st 4th Defendants on the Suit Property. He also produced F/R 325/32 which is the survey plan that shows that the nursery school is on L. R. No. 12062/884 measuring 0.2032 hectares. The Suit Property abuts the nursery school. This is also confirmed by the Part Development Plan (PDP) dated 21/11/2011 which shows that the nursery school on plot no. 272 is next to the Suit Property and that it adjoins the secondary school on the right.

12. Having considered the pleadings and the evidence produced in court, the court finds that the Plaintiff has proved his case on a balance of probabilities. The court issues an order to evict the 1st to 4th Defendants from the Suit Property.

13. As it was agreed between counsels for the Plaintiff and the 5th Defendant, the Plaintiff will pay the fees necessary for the 5th Defendant to replace the beacons on the Suit Property.

14. The court finds that the Plaintiff has established that the 1st to 4th Defendants trespassed on the Suit Property and awards the Plaintiff general damages of Kshs. 250,000. The Plaintiff is also awarded the costs of this suit to be borne by the 1st to 4th Defendants.

Dated and delivered at Nairobi this 25th September 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Gatumuta for the Plaintiff

No appearance for the Defendants

Mr. V. Owuor- Court Assistant