



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT CHUKA

CHUKA ELC CASE NO 52 OF 2017

FORMRLY MERU ELC CASE NO.115 OF 2016

GRACE MARTHA MUKEMBU.....PLAINTIFF (BY COUNTERCLAIM)

VERSUS

KATHENYA RUGURU.....1ST DEFENDANT (BY COUNTERCLAIM)

MUKUNDI MAKEMBO.....2ND DEFENDANT (BY COUNTERCLAIM)

JUDGMENT

1. The parties took a hearing dated on 21st June, 2017. Advocate Mwiti held brief for advocate Nyenyire for the plaintiff. Advocate Ondari held brief for advocate Ndubi for the 1st and 2nd defendants. The advocates representing the parties told the court that, by consent, they had agreed that hearing of the case proceeds on 3.10.2017. The court obliged them. Hearing was fixed to take place on 3.10.2017.
2. On 3.10.2017, the plaintiff, Kathenya Makembu was in court.
3. In accordance with Order 12, rule 2, after the suit was called on for hearing outside the court and only the plaintiff was in court, I am satisfied that all the parties had notice that the suit was to be heard on 3.10.2017. I have ordered the suit to proceed exparte.
4. PW1, the plaintiff was sworn by the Bible by CA Ndegwa.
5. He told the court that he was Kathenya Ruguru, the plaintiff in this suit. He asked the court to grant him the orders he prayed for in his plaint. He told the court that he placed reliance upon his pleadings and especially his supporting affidavit sworn on 19th October, 2016 in support of his Notice of Motion application dated 19th October, 2016.
6. PW1 asked the court to dismiss the defendant's defence and counterclaim as both were not prosecuted. He requested the court to rely on his Reply to Defence and Counter-claim sworn on 11th August, 2016 and filed in court on 16th September, 2016.
7. I have considered the evidence tendered by the plaintiff. It is not controverted.
8. In the circumstances, I find it meritorious to grant the prayers the plaintiff is seeking in his plaint.
9. The defendant's counter-claim is dismissed.
10. Judgment is entered for the Plaintiff against the Defendant in the following terms:
 - a) It is hereby declared that the Plaintiff's land parcel at Kamathuu, Kathangari Location belongs to KATHENYA RUGURU, the Plaintiff.
 - b) An order of injunction is hereby issued and directed to the Defendants, GRACE MARTHA MUKEMBU and MUKUNDI MAKEMBO, their agents, servants, employees and anybody else acting at their behest or instructions from trespassing, using, transferring and / or dealing with the plaintiff's land parcel at Kamathuu, Kathangari Location.
 - c) It is so ordered

Delivered in open court at Chuka this 3rd day of October, 2017 in the presence of:

CA: Ndegwa

Kathanya Ruguru – Plaintiff

P.M. NJORGE

JUDGE