



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. SUIT NO. 1024 OF 2007

JOHN RICHARD GITHERE.....1ST PLAINTIFF

BLUELINE CONSTRUCTION COMPANY LTD.....2ND PLAINTIFF

VERSUS

WAMUNYORO INVESTMENTS LTD.....1ST DEFENDANT

GEOFFREY GACHAGUA.....2ND DEFENDANT

JUDGEMENT

1. The Plaintiffs filed suit on 12/5/2003 seeking a temporary and permanent injunction to restrain the Defendants from trespassing, constructing, taking possession, wasting, damaging or in any way interfering with the Plaintiffs' quiet enjoyment of the parcels of land known as L.R. Numbers 209/10304 Grant Number I.R. 50654 and L.R. No. 209/10303 Grant Number I. R. 50653 both of which are situated in Nairobi (the "Suit Properties").

2. In addition, the Plaintiffs' seek general and exemplary damages for trespass and deprivation of their land. They seek an order for the Defendants to demolish and remove all the buildings and structures erected on the Suit Properties.

3. The 1st Plaintiff is the registered proprietor of L.R. No. 209/10304 while the 2nd Plaintiff owns L.R No. 209/10303. The Suit Properties measure two and a half acres each.

4.

5. The Plaintiffs claim that sometime in April 2003, the Defendants unlawfully and without any justifiable cause, entered and trespassed upon the Suit Properties and started constructing illegal buildings and structures on the Suit Properties without the authority of the Plaintiffs. The Plaintiffs claim that the Defendants have no rightful claim to the Suit Properties and that their illegal actions contravened the Plaintiffs right to the property enshrined in the Constitution and the Land Titles Act.

6. Despite being served the Defendants did not enter appearance or file defence. The firm of Moses N. Siagi and Company Advocates acted for the Defendants until this firm of advocates filed an application in court on 10/4/2007 seeking leave to cease acting for the Defendants citing lack of instructions. The court allowed that application on 19/6/2017. The Plaintiffs served the Defendants who did not attend court for the hearing.

7. The 1st Plaintiff gave evidence. He stated that he was the director of the 2nd Plaintiff. He adopted his

witness statement in which he states that he is aware that the 1st Defendant purports to be the registered owner of L.R. No. 209/12680 grant number 90925. It is not clear whether this plot falls where the Suit Properties are. The 2nd Defendant is the director of the 1st Defendant.

8. It was his evidence that the Defendants unlawfully trespassed upon the Suit Properties and started constructing illegal structures thereon on 11/4/2003. The Defendants entered into the Plaintiffs land without the Plaintiffs authority.

9. The Plaintiff claims that the Defendants conduct is unlawful because they have no rightful claim to the Suit Properties and they have known all along that the Plaintiffs owned the Suit Properties. The Plaintiffs claim to have suffered loss and damage for which they hold the Defendants liable and claim damages against them. The Plaintiffs ask the court to restrain the Defendants from continuing with their illegal actions otherwise they will suffer irreparable loss and damage.

10. The Plaintiffs produced various documents in support of their claim. These included copies of the titles for the Suit Properties showing that the Suit Properties were leased to the Plaintiffs for 99 years from 1/11/1983 and a copy of the order for injunction issued on 22/9/2003 restraining the Defendants from trespassing or interfering with the Plaintiff's quiet enjoyment of the Suit Properties until the suit is heard.

11. The 1st Plaintiff wrote letters on 11/4/2003 to the Permanent Secretary for Internal Security and, the Provincial Commissioner for Nairobi Province complaining that plot number 209/10304, Embakasi Nairobi had been grabbed by people from *Mukuru kwa Reuben* who had gone ahead to subdivide the land and erect beacons on it without the Plaintiffs' consent. The Plaintiffs sought the intervention of these offices to assist them recover their property. The Plaintiffs have been paying rates for the Suit Properties as can be seen in the annexed payment slips.

12. The issue for determination is whether the Plaintiffs have proved their case and whether the court ought to grant the reliefs sought in the plaint.

13. The Plaintiffs evidence is uncontroverted. The Plaintiffs are registered as the proprietors of the Suit Properties. The Defendants invaded the Suit Properties and put up structures thereby denying the Plaintiffs possession and quiet enjoyment of their land without any justifiable cause.

14. The Plaintiff's witness testified that the trespassers are still on the land and the Plaintiffs are unable to use the land to put up go downs and their machinery, caterpillars and other equipment for road construction.

15. The court finds that the Plaintiffs have proved their case and grants a permanent injunction to restrain the Defendants from trespassing onto the Plaintiffs' land or in any manner interfering with their quiet enjoyment of the Suit Properties.

16. An order is hereby issued directing the Defendants to demolish and remove all the buildings and other structures they have erected on the Suit Properties.

17. The court grants the Plaintiffs general damages of 100,000/= together with costs of this suit.

Dated and delivered at Nairobi this 20th day of November 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Mwangi for the Plaintiffs

No appearance for the Defendants

Mr. V. Owuor- Court Assistant