



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 36 OF 2016**

**LUCY WANJIRU KIBUSU(Suing as the administrator of the**

**Estate of JOYCE WANGARI KIBISU).....PLAINTIFF**

**VERSUS**

**CHARLES MIYENDA CHORE.....DEFENDANT**

**JUDGMENT**

***(Suit for the plaintiff for recovery of land; suit land having been allotted to the plaintiff; defendant trespassing into it and developing a structure; no defence filed by the defendant; evidence showing that property is owned by the plaintiff; judgment entered for the plaintiff; defendant to vacate suit land or be evicted; defendant to pay general damages for trespass)***

1. This suit was commenced by way of a plaint which was filed on 9 February 2016. The plaintiff has filed this suit on behalf of the estate of one Joyce Wangari Kibisu (deceased). She has pleaded in her plaint that the deceased was the registered owner and/or lawful allottee of the parcel of land known as Business Plot No. 239 Nguriga in Njoro area. She has pleaded that sometimes in the year 2012 or 2013, the defendant unlawfully trespassed into the said plot and erected some structures. In the suit, she has sought for a declaration that she is the lawful allottee of the suit plot and for orders of eviction against the defendant. She has also sought damages for trespass and costs of the suit.

2. Despite being served, the defendant did not enter appearance nor file defence to the suit. Neither did he attend during the hearing of the case despite being served with a hearing notice.

3. In her evidence, the plaintiff testified that her late mother was allotted the plot on 13 January 1986 by the County Council of Nakuru which allotment letter she produced as an exhibit. She averred that they have been paying land rents and land rates and she produced some rent demand notices and payment receipts. She also stated that her late mother prepared building plans for the plot which plans were approved. She produced as exhibits the approved plans. She testified that her mother did not manage to develop the plot as she soon fell ill and eventually died in the year 2004. After her death, the family assigned the plot to one of her brothers, but he did not have the resources to develop it, and it thus remained vacant. In the year 2014, the family agreed that the plaintiff could develop the plot but when she went to it, she found that the defendant had developed it. She reported to the County Government of Nakuru, which wrote a letter to the defendant to remove his developments, but he did not do so. She investigated why the defendant had developed the suit land and she discovered that the defendant was alleging to have purchased it from one Joseph G. Kimiti and she produced a copy of the sale agreement. She observed that the sale agreement was for a plot No. 240B yet the plot she claims is plot No.239. She also went to the County Government to inquire where the plot No. 240B could be and she was informed by the County Surveyor that their maps do not have such a plot.

4. The plaintiff called the Nakuru County Surveyor, one Laban Otieno Hayanga as a witness. He affirmed that the plot in dispute was allotted to the deceased mother of the plaintiff. When her family wrote to the County about the development on the plot, he proceeded to the ground and confirmed that the development was in the disputed plot. He testified that they do not have a plot No. 240B.

5. I have considered the pleadings and the evidence tendered. It is the claim of the plaintiff that the plot in dispute belongs to the estate of her late mother. As I have earlier mentioned, the defendant did not defend this suit and the pleadings and evidence tendered by the plaintiff are uncontroverted. I have no reason to doubt that the disputed plot was allotted to the deceased for the plaintiff did produce an allotment letter dated 13 January 1986 from the County Council of Nakuru. I have also seen the various notices to pay rents and the rent receipts that were paid by the deceased. The County Surveyor also confirmed that the said plot was allotted to the deceased. The defendant has not come to court to demonstrate any right over the disputed plot.

6. Given the overwhelming evidence produced by the plaintiff, I have no hesitation to hold that as between the estate of Joyce Wangari Kibisu and the defendant, it is the said estate which is entitled to ownership of the disputed plot. The defendant has no business being in another person's plot of land and he must therefore vacate the said land. He must vacate the land within 14 days of being served by this

judgment and/or decree. If he does not do so, an order of eviction may issue.

7. I also award the plaintiff a sum of Kshs. 100,000/= as general damages for trespass, in recognition of the fact that her rights to property were violated by the defendant. In addition the plaintiff shall have the costs of this suit.

8. I now make the following final orders :-

*(i) That as between the plaintiff and defendant, I hereby declare that it is the plaintiff who is entitled to ownership of the Plot No. 239 Nguriga Trading Centre, Njoro.*

*(ii) That I hereby declare the defendant to be a trespasser in the said plot of land and hereby order that he proceed to vacate the said plot forthwith and no later than 14 days after service of the judgment and/or decree and if he fails to so vacate, an eviction order do issue.*

*(iii) That I hereby award the plaintiff the sum of Kshs. 100,000/= as general damages for trespass.*

*(iv) That the plaintiff will have costs of this suit.*

9. Judgment accordingly.

**Dated, signed and delivered in open court at Nakuru this 16<sup>th</sup> day of November 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of : -**