



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

LAND CASE NO. 112 OF 2012

GEOFREY MURIUKI MANENE.....PLAINTIFF

=VERSUS=

NJOROGE NDUNGU.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit against the defendant seeking the following reliefs;-

a. That an eviction order do issue against the defendant herein from LR No.Dagoretti/Thogoto/1115.

b. A permanent injunction restraining the defendant whether by himself, his agents and servants or in any manner howsoever from claiming interests, rights or in any way dealing with or trespassing onto or continuing further trespass onto the plaintiffs land and/or interfering with the plaintiff rights of quiet possession, occupation and enjoyment of LR No .Dagoretti/Thogoto/1115.

c. General damages against the defendant for trespass.

d. Costs of and incidental to the suit and interest at court rates.

2. The defendant's counsel were given time to comply with Order 11 of the Civil Procedure Rules but they never complied. The defendant's Advocate applied for adjournment on 29th June 2017 to enable them make an application to cease acting but the application for adjournment was rejected. The hearing proceeded after the defendant's advocate stormed out of the Court.

3. The history of the present dispute can be traced to 1984 when the defendant's cousin Kimani Gathogo sued the defendant's father over the ownership of LR No.Dagoretti/Thogoto/372. The dispute was heard by elders who ruled that the said property be subdivided into two equal portions. The defendant's father was not satisfied with the verdict by the elders. He made an application before Kiambu Court challenging the verdict of the elders. This application was dismissed. The defendant's father filed an appeal to the High Court which appeal was also dismissed. The property was finally subdivided and it resulted into LR No. Dagoretti/Thogoto/1115 (suit property) which was registered in the name of Kimani Gathogo and LR No. Dagoretti/Thogoto/1114 which was registered in the name of the defendant's father who is now deceased.

4. Kimani Gathogo sold his portion to the Plaintiff herein on 2nd December 2010. The plaintiff is now the registered owner of the suit property. Prior to the plaintiff purchasing the suit property, the previous owner Kimani Gathogo had tried to evict the defendant and his siblings from the suit property in vain. The plaintiff now filed the present suit in which he seeks among other prayers an eviction order.

5. I have perused the documents produced by the plaintiff and there is no doubt that he is the registered owner of the suit property. A look at the affidavits filed in this file show that after the subdivision of the main title, the defendant's family remained on the portion which was registered in the name of Kimani Gathogo instead of occupying the portion registered in their father's name. The defendant seems to contend that since they have constructed on the portion registered in the plaintiff's name, they should be allowed to transfer the portion which is in their father's name to the plaintiff as it is not developed.

6. It is clear that the plaintiff bought the suit property while the defendant and his family were in occupation of the same. This is clear from the pleadings in Kikuyu Senior Resident Magistrate's Court Civil Case No.316 of 2009 in which Kimani Gathogo had sued the defendant and his family members. The prayers he was seeking were exhumation orders. He wanted the remains of the defendant's mother who died in 1969 removed from the suit property. He also wanted the remains of the defendant's father removed from the suit property.

7. The defendant is aware that he is on someone else's property but he is refusing to move from there. He has even gone ahead to lodge a caution against the suit property. The defendant has no basis for remaining on the plaintiff's property. The defendant has been kept out of his property since 2010 when he purchased the same. I find that the plaintiff is entitled to general damages which I assess at **Kshs.200,000/-**. I also allow the Plaintiff's claim in terms of prayers **(a),(b)** and **(d)**.

Dated, Signed and delivered at **Nairobi** on this **13th** day of **December 2017**.

E.O.OBAGA

JUDGE

In the presence of;-

Mr Kiingati for Mr Mungla for Plaintiff

Court Assistant: Kevin

E.O.OBAGA

JUDGE