



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 28 OF 2016

KHADIJA KURIA.....PLAINTIFF

VERSUS

PATRICK WAMBUA NDAMBUKI.....1ST DEFENDANT

LIBAN GUYO.....2ND DEFENDANT

JUDGEMENT

1. The Plaintiff sued the Defendants on 19/1/2016 seeking a permanent injunction to restrain them from trespassing or interfering with her parcel of land known as L.R. No. 209/10912 situated within Nairobi.
2. The Plaintiff is the registered owner vide Grant Number I.R. 10301 of L.R. Number 209/10912 (“the Suit Property”).
3. She claims that the Defendants have trespassed on her land and interfered with her enjoyment and quiet possession of the Suit Property. She seeks an order of eviction against the Defendants or their agents.
4. Summons to enter appearance, the plaint together with the application for injunction were served on the Defendants but they did not enter appearance or file their defences.
5. The court file went missing for some time and was reconstructed upon the Plaintiff’s application.
6. The Plaintiff requested for judgement against the Defendants in default of appearance and was directed to set down the case for formal proof.
7. The hearing proceeded on 17/7/2017. The Plaintiff attended court and gave evidence. She produced the original grant that shows she was registered as the proprietor of the Suit Property on 18/09/2012. She urged the court to issue a permanent injunction against the Defendants who have trespassed on her land by erecting structures on it causing her to suffer loss and damage. She sought the reliefs prayed for in the plaint.
8. The court has considered the matter and looked at the submissions filed by the Plaintiff’s advocate.
9. The issues for determination are whether the Plaintiff has proved that she is the owner of the Suit Property and whether she is entitled to the reliefs she seeks.
10. The Plaintiff who holds a title over the disputed land has proved on a balance of probabilities that she is the registered proprietor of the Suit Property and is therefore entitled to the protection afforded by law.

The certificate of title she holds over the Suit Property is *prima facie* evidence that she is the absolute and indefeasible owner under Section 26 of the Land Registration Act.

11. The registration of the Plaintiff as the proprietor of the Suit Property vests in her the absolute ownership of the land together with all rights and privileges belonging thereto pursuant to Section 24 of the Land Registration Act.

12. The Defendants have unlawfully entered onto the Suit Property and erected structures on it. The court finds that the Defendants have trespassed on the Plaintiff's land. Once trespass to land is established, it is actionable *per se*.

13. The other issue the court has to determine is the quantum of damages to award for trespass. The Plaintiff's counsel submitted that the sum of Kshs. 1,500,000/= would suffice against the Defendants as general damages for the trespass on the Suit Property.

14. He relied on the decisions in **Titus Gatitu Njau v Municipal Council of Eldoret** [2015] eKLR and **Paul Audi Ochuodho v Josiah Ombura Orwa** [2014] eKLR where the court awarded general damages of Kshs. 500,000/= for trespass. In those cases the plaintiffs had laid a basis for the award of general damages and mesne profits and the court took into consideration the circumstances of the cases. In the latter case there was evidence of the expected maize yield that the Plaintiff would have sold were it not for the defendant's trespass on its land. In the former case a commercial building had been demolished by the trespasser.

15. The Plaintiff has proved on a balance of probabilities that she is the owner of the Suit Property. The court enters judgement for the Plaintiff against the Defendant as prayed in the Plaint. The Plaintiff is awarded Kshs. 180,000/= which the court deems to be reasonable as general damages. The Plaintiff is also awarded the costs of this suit.

Dated and delivered at Nairobi this 13th day of December 2017.

K. BOR

JUDGE

In the presence of: -

Ms. Wanyama for the Plaintiff

No appearance for the Defendants

Mr. V. Owuor- Court Assistant