



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**LAND AND ENVIRONMENTAL LAW DIVISION**  
**CIVIL SUIT (ELC) NO. 411 OF 2010**

**SUSAN WANJIKU KARANJA.....PLAINTIFF**

**VERSUS**

**LAWRENCE MUGAMBI.....DEFENDANT**

**J U D G M E N T**

1. The Plaintiff's claim in this suit is described in her Plaint dated 6th September, 2010 and filed in Court on the same date. Paragraphs 1 to 13 of the Plaint are reproduced herebelow:-

*1. The Plaintiff is a resident of Germany, she has filed this suit through her agent and mother M/S Eunice Muthoni Warui to whom she has given a power of Attorney registration number P/A 54618/1 to institute and prosecute this suit.*

*2. The Defendant is a resident of Ruaraka in Nairobi. The summons will be served upon him by the Plaintiff's Advocate office.*

*3. On 11/8/2009 Eunice Muthoni Warui hereinafter referred to as the Plaintiff's agent bought for the Plaintiff plot reference number 32 Mathare North Drive in estate which was then undeveloped using the name of the Plaintiff from one Samuel Kimani Kamau for shillings 806,000/= cash and took possession thereof immediately and the City Council of Nairobi transferred the plot to the Plaintiff after the Plaintiff paid to the City Council of Nairobi Kshs. 85,000/= as follows:*

*i. 12/08/2009 shs. 20,000/= in the name of Samuel Kimani Kamau as part premium.*

*ii. 14/08/2009 shs. 35,000/= in the name of Susan W. Karanja plaintiff as stand premium.*

*iii. 10/09/2009 shs. 30,000/= in the name of Susan W. Karanja Plaintiff as plan fees.*

*4. On 13/8/2009 the City Council of Nairobi had authorized the Plaintiff to pay it charges for the plot reference number 32 Mathare North Drive in and on 14/08/2009 the City Council of Nairobi gave the Plaintiff a letter of allocation for the plot reference number 32 North Drive in estate back dated 17/07/2003.*

5. In September, 2009 the Plaintiff's agent on authority of the Plaintiff excavated the site of plot reference number 32 Mathare North Drive in estate and further spent shs. 579,430/= in buying and bringing building materials to the site as follows:-

i. Excavation costs	shs.	120,000/=
ii. 3 Lorries of Ballast	shs.	54,000/=
iii. 3 Lorries of Sand each 15 tones	shs.	105,000/=
iv. 9'X9' building stones 3 Lorries	shs.	120,000/=
v. Building steel bars	Shs.	24,430/=
vi. Other building steel bars	Shs.	34,000/=
vii. Water used in construction 10 drums	shs.	2,000/=
viii Labour for building foundation, hiring shavels, Mattocks, buckets	shs.	120,000/=
	<u>shs.</u>	<u>579,430/=</u>

6. On 27/10/2009 when the plaintiff's agent aforesaid was constructing foundation on the site, the defendant, his agents and hired gang, forcibly trespassed to the site, demolished the pillars constructed by the Plaintiff's agent and on 28/10/2009 the defendant started constructing his own pillars but the Chief of Kasarani location ordered him to demolish his pillars on site and he did so.

7. On 24/05/201 when the plaintiff's agent aforesaid went again to construct the pillars on site of the plot aforementioned the defendant, his agents or employees came with a gang and forcibly destroyed the same.

8. On late July, 2010 the defendant forcibly used all the plaintiff's building materials worth 579,430/= and since then he has been constructing storey building therein often at night and the plaintiff has suffered special damages of shs. 579,430 enumerated in paragraph 5 above.

9. The Plaintiff further states that the defendant has despite demand prevented the Plaintiff from accessing the site and he is constructing a storey stone house and joining his other storey house in plot number 31.

10. The plaintiff states that the defendant should be evicted from Plot No. 32 Mathare North Drive in estate and the storey house he is building on site should be demolished at the defendant's costs.

11. The defendant had resisted the notices of the City Council of Nairobi dated 28/7/2010 to demolish the building that he is constructing on the plot.

12. There is no other suit pending and there have been no previous proceedings in any Court between the Plaintiff and the Defendant over the same Subject matter.

13. The Cause of action has arisen in Nairobi within the jurisdiction of this Honourable Court.

**REASONS WHEREFORE:** The plaintiff prays for judgment against the defendant for:-

a. Judgment for shs. 579,430/= with interest at Court rates.

***b. That the Defendant, his agents or employees be evicted from the plaintiff's plot reference number 32 Mathare North Drive in estate forthwith.***

***c. That the storey house the defendant is building on plaintiff plot No. 32 Mathare North drive in estate be demolished at the defendant's costs.***

***d. Costs.***

2. The Defendant was not in Court when PW1 started giving her evidence. Later on, his Advocate informed the Court that he had turned up in Court, and the Court asked him to identify himself. In a rather casual manner, he produced a passport number A 1961170 in the name of Leon Bradley Mutuma born on 07/03/2002. This means that the owner of the passport was about 14 years old and, therefore, could not be the defendant, by whatever name called. This suit was filed in 2010 meaning that the owner of the passport was only 8 years old when this suit was filed.

3. PW 1 told the Court that she had a Power of Attorney which empowered her to represent her daughter who lived in Germany. She produced the said Power of Attorney as exhibit 1. She told the Court that she bought the suit plot from one Samuel Kimani Kamau who possessed the original allocation letter. She produced the apposite Sale Agreement as exhibit 2. The purchase price was Kshs. 700,000. She also produced the letter of allocation as exhibit 3.

4. PW1 produced Exhibit 4 showing that she had paid City Council of Nairobi dues. She produced as exhibit 5, the letter of allocation issued to her daughter, Susan Wanjiru Karanja, the Plaintiff, after the suit plot was transferred from the original allottee. She produced as exhibit 6, the building plan which had been approved by the City Council of Nairobi.

5. PW1 told the Court that after she received approvals from the City Council, she started developing the suit plot. However, some people came to the plot and destroyed what she had put up. She said that these people were led by Lawrence Mugambi, the Defendant and a person called Njoroge. She told the Court that Mugambi's group chased away her workers. She produced as Exhibit 7 a bundle of receipts showing that she had spent a sum of Kshs. 579,430. She also produced as Exhibit 8, photographs showing that the construction had been demolished.

6. PW 1 told the Court that she referred the matter to the City Council of Nairobi and she was given a letter by the concerned Director confirming that the suit plot belonged to her daughter. She produced as Exhibit 9 the Minutes of the meetings held at the City Council on 24/09/2009 and 29/09/2009 and a letter dated 29/09/2009 confirming ownership of the suit plot. PW1 also produced as Exhibit 10, a letter from the City Council ordering the Defendant to stop the development he had embarked upon in the suit plot.

7. PW1 testified that this Court issued orders on 09/12/2011, which ordered the Defendant to stop further developments on the suit plot, which orders he disobeyed. She produced evidence of the existence of that order as Exhibit 10.

8. PW 1 prayed for Judgment against the Defendant for a sum of Kshs. 579,430/= and interest thereon, eviction of the defendant, his agents or employees from the suit plot and demolition of the building the defendant has put up suit on the plot at his own costs.

9. During Cross-examination, PW1 explained that although Contempt Proceedings had been filed against the Defendant, hearing of the apposite application was stopped when the Defendant offered to settle the matter. Later on, she testified, the Court directed that the application be done away with so that the the suit could be heard expeditiously.

10. I do find that cross-examination of PW1 by the Defendant's Advocate did not in any way impeach the Integrity of the evidence she had given. The Defendant did not deny that he had offered to have the matter settled. This offer was a constructive admission that he had moved into the suit plot forcefully and without any legal basis.

11. PW 2 testified that he took the photographs produced by PW1 as Exhibit 8.

12. It borders on phantasmagoria that someone can forcefully move into someone's plot, demolish the construction standing on the Plot, use the building materials from the demolished construction to put up a new building, forcefully evict the owner using hired goons and noncharlantly ignore orders from the City Council of Nairobi which regulates Construction of buildings in Nairobi. I term this as classic impunity. To add salt to injury, the Defendant evinced egregious contempt of a Court order. And yet escaped Censor!

13. To put matters in perspective and so that the orders issued in this judgment can reflect their proportionality, I reproduce herebelow the Ruling delivered by the Hon. Lady Justice Okwengu, J (now a Court of Appeal Judge):-

*i. By a chamber summons dated 6th September, 2010 Susan Wanjiku Karanja suing through her agent Ms. Eunice Muthoni Warui seeks an order of interlocutory injunction restraining the defendant Lawrence Mugambi, his servants or agents, from constructing any structure, house or any development on the applicant's Mathare North (Drive In Estate), and from selling or disposing of the same till the case she has filed against the defendant is heard and fully determined .*

*ii. The application is supported by an affidavit sworn by the applicant's agent to which is attached an Agreement Of Sale showing that the applicant bought Plot No. 32 Mathare North (Drive In Estate), from Samuel Kimani who was the allottee of the plot. The applicant has also exhibited receipts for payments made to the City Council for stand premium and plan fees.*

*iii. In September, 2009, the applicant through his agent excavated the site of the plot and brought materials on site and started construction of the foundation. The defendant however forcefully trespassed on the site, demolished what the applicant had constructed and started constructing a storied building and prevented the applicant from accessing the site. The defendant was served with a demolition notice by the City Council, but he has ignored the same. The applicant therefore prays for an order restraining the defendant from carrying on with further construction pending the hearing and determination of the suit.*

*iv. The defendant objects to the application through an affidavit sworn on 5th October, 2010. The defendant maintains that he bought the disputed plot from one Stephen Njoroge Waweru at an agreed price of Kshs. 700,000/=. The defendant produced a Sale Agreement to that effect. The defendant contended that since buying the plot he has been in uninterrupted occupation of the plot. The defendant annexed to his Replying Affidavit a letter of allocation to Sammy Kimani Kingori, and receipts for payments made to Nairobi City Council by the said Sammy Kimani Kingori.*

*v. I have carefully considered the application, the affidavit in support and in reply and the submissions made by counsels. I find the applicant has shown that she bought the disputed property from Sammy K. Kimani who was the original allottee and that she paid the required stand premium to the council and was issued with an allotment letter in her name. On the other hand although the defendant claims that he bought the disputed plot from one Stephen Njoroge Waweru, it is not clear what interest if any that the said Stephen Njoroge Waweru had on the plot. The documents exhibited by the defendant as evidence of ownership from the City Council are documents in the name of Sammy Kimani Kingori , there is however no nexus shown between this person and Stephen Njoroge Waweru who sold the plot to the defendant.*

14. This ruling contains the order which the Defendant disobeyed. By disobeying the Court Order, the Defendant evinced his untrammelled disdain and contempt for Courts. He veritably savaged the Integrity of Courts. His behaviour calls for decisive action by the Court. From the record of the proceedings in this suit he, against a Court Order, went ahead to put up what seems to be a Seven Storey Building.

Despite the Orders this Court will issue, The Plaintiff and the Defendant can always reach a suitable settlement. They have a right to do so if they so wish.

15. I find that the Plaintiff has proved her case against the Defendant. I therefore, grant the following orders:-

**1. Judgment is entered for the Plaintiff against the Defendant for Kshs. 579,430/= and interest thereon at Court rates from 6th September ,2010 when this suit was filed.**

**2. An order is issued for eviction of the Defendant, his agents or employees from the Plaintiff's plot reference number 32 Mathare North Drive In Estate forthwith.**

**3. The building standing on the Plaintiffs Plot No. 32, Mathare North Drive In Estate be demolished at the Defendant's Cost.**

**4. The O.C.S in charge of the area, that is Kassarani, where the Plaintiff's plot No. 32, Mathare North Drive In Estate is situated is ordered to assist in the implementation of orders Numbers 2 and 3 above.**

**5. Costs are awarded to the Plaintiff .**

**It is so ordered.**

**DELIVERED IN OPEN COURT AT MERU THIS 25<sup>TH</sup> DAY OF MAY, 2016 IN THE PRESENCE OF:-**

CC: Daniel /Lilian

Eunice Muthoni representing Plaintiff

Gatari Ringera h/b for Defendant

**P.M. NJOROGE**

**JUDGE**