



REPUBLIC OF KENYA



**KENYA LAW**  
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**Waweru v Kirobi (Environment & Land Case E057 of 2021)  
[2024] KEELC 784 (KLR) (16 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 784 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E057 OF 2021**

**JG KEMEI, J**

**FEBRUARY 16, 2024**

**BETWEEN**

**DOMNIC MURITU WAWERU ..... PLAINTIFF**

**AND**

**LUCY MUMBI KIROBI ..... DEFENDANT**

**JUDGMENT**

1. *Vide* a Plaint dated 30/4/2021 and filed on 25/5/2021 the Plaintiff sued the Defendant for the following orders:-
  - a. A declaration that the Plaintiff is the registered and sole beneficial owner to all that parcel of land known as Title No. Ruiru/Kiu Block 7/1744.
  - b. An order of eviction against the Defendant from the parcel of land known as Title No. Ruiru/Kiu Block 7/1744.
  - c. An order against the Defendant to demolish all the structures on the parcel of land known as Title No. Ruiru/Kiu Block 7/1744 or the Plaintiff demolishes them and recovers the costs from the Defendant.
  - d. A permanent injunction against the Defendant either by herself, her agents or servants from interfering whatsoever with the parcel of land known as Title No. Ruiru/Kiu Block 7/1744.
  - e. *Mesne profits*.
  - f. Costs of this suit and interest.
2. It is the Plaintiff's case that at all material times to this suit he is the registered owner of all that parcel of land namely Ruiru Ruiru Kiu Block 7/1744 (suit land). That in 2018 the Defendant illegally entered



the land and erected structures on it without his consent or knowledge. Particulars of illegality are pleaded under paragraph 5 of the Plaintiff.

3. The Plaintiff's claim is denied by the Defendant vide her Statement of Defence and counterclaim dated 23/8/2021 and filed on 24/8/2021. She averred that she has been in possession of the suit land since 2009 - through the Plaintiff's mother's employee agent named Eliud Njoroge. That she purchased the land *vide* Agreement of Sale dated 8/6/2009 through the said Agent and the estate of Ngura Waweru failed to disclose that the Defendant was the owner of the land *vide* virtue of sale / purchase.
4. She contended that the Plaintiff is motivated by malice in filing this suit after the Defendant repulsed the demand for more money by the Plaintiff based on market price in the year 2019. That the Plaintiff has repeatedly caused destruction to the Defendant's property and chased away the Defendant's tenants. That she had a meeting with the Plaintiff's Advocate to discuss a payment plan with respect to the Plaintiff's demand.
5. In her counterclaim she reiterated the contents of Defence and stated that she entered into a sale agreement on 8/6/2009 under the Plaintiff's mother's agent Eliud Njoroge T/A Crystal Land Properties for the sale of the suit land at Kshs. 260,000/-. That upon successful subdivision of the mother title she and others not before the Court were given their Certificate of Title.
6. That in 2019 she got information that the Plaintiff was not satisfied with the initial purchase price she had paid for the property and demanded more money. Upon visiting the Plaintiff's Advocates office the Defendant proposed an additional amount and a payment plan. She reached this decision on the basis that she is a widow with three (3) school going children who are dependant on her. The Plaintiff declined and demanded the property to revert to him and proceeded to damage the house erected thereon. Particulars of breach of contract were pleaded under paragraph 22. The Defendant seeks the following orders:-

“Particulars of breach of contract by Defendant

- a. Failure to perform the contract by the Plaintiff.
  - b. Receiving the purchase price with intention of not transferring title.”
7. It is claimed that as a result of the Plaintiff's actions the Defendant continues to suffer loss and damage for which the defendant sought the following orders;
    - a. A declaration that the Defendant is the registered and sole beneficial owner to all that parcel of land known as Ruiru Kiu Block 7/112/15.
    - b. A permanent injunction against the Plaintiff either by himself, his agents or servants from interfering with the parcel of land known as Ruiru Kiu Block 7/112/15.
    - c. General damages.
    - d. Costs of the suit and interest.
  8. At the hearing, the Plaintiff's case was led by PW1 – Dominic Muritu Waweru. He relied on his written statement dated 30/4/2021 as evidence in chief. He testified and informed the Court that the Defendant had illegally occupied his land which land was given to him by his mother in 2018. That the Defendant claims to have bought the land from a land broker namely Eliud Njoroge Mbogo. That his deceased mother never sold any land to the Defendant.
  9. In addition he stated that the land is not occupied but there is a house erected on it.



10. In support of his case the witness produced documents marked PEX No. 1 - 3.
11. Despite the hearing notice having been served upon the Defendant, the Defendant failed to attend Court for the hearing hence the Plaintiff's case against the Defendant is undefended.
12. The Plaintiff submitted that failure to adduce evidence by a party means the evidence by the other party remains uncontroverted and therefore unchallenged. See Machakos HCCC No. 7 of 2020 – [\*Chino General Merchants Xtream Ltd v Chen Zhebit alias Jack & Anor\*](#); HCCC No. 55 of 2015 – [\*Moi Bigege v Stancom Tobacco \(K\) Ltd.\*](#) The Court was urged to allow the Plaintiff's case.

### **Analysis and determination**

13. The key issue for determination is whether the Plaintiff has proved his claim.
14. It is not in dispute that the Defendant was served with the hearing notice through her lawyers on record but she failed to attend Court to defend the Plaintiff's suit and prosecute her own counterclaim. Consequently the case proceeded exparte.
15. It is trite that where a case is not defended the Plaintiff retains the onus to proof his case on the standard of probabilities. See the case of [\*Gichinga Kibutha v Caroline Nduku\*](#) [2018] eKLR.
16. Evidence was led that the Defendant trespassed into the suit land in 2018 and erected structures without the consent and knowledge of the Plaintiff.
17. Section 24 and 25 of [\*Land Registration Act\*](#) gives a registered land owner a right of ownership as stated thus:-

Section 24 of [\*Land Registration Act\*](#):

“The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto,”

Section 25 of [\*Land Registration Act\*](#):-

“25

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –
  - a. To the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register, and
  - b. To such liabilities, rights and interests as affect the same and are declared by Section 28 not to require noting on the



register, unless the contrary is expressed in the register.”

18. In this case the Plaintiff placed before the Court a certified copy of an official search of the suit land dated 18/12/2020 and copy of title issued on 12/3/2018 in his name. In the absence of any challenge to the title the Court takes the Plaintiff as the owner of the suit land.
19. Having held that on a prima facie evidence, the court finds that Plaintiff is the owner of the registered land, evidence was led by the Plaintiff that the Defendant without his consent and knowledge has trespassed onto the land.
20. Trespass is defined in *Black's Law Dictionary* as follows:-

“Wrongful entry of another’s real property.”
21. The Law of *Trespass Act* defines trespass as follows:-

“ Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”
22. Going by the definition above and the evidence placed before the Court and in the absence of any challenge to the same the Court finds that the Defendant is a trespasser on the Plaintiff’s land.
23. The Plaintiff has urged this Court to order mesne profits. In the legal sense mesne profits is special damages which need to be pleaded and proved. The Court finds that the Plaintiff had the burden of placing relevant evidence before the Court to proof this claim. The Plaintiff failed to do so and the Court is constrained to grant the prayer.
24. Reasons wherefore I proceed to enter Judgment in favour of the Plaintiff as follows:-
  - a. It is hereby declared that the Plaintiff is the registered and sole beneficial owner to all that parcel of land known as Title No. Ruiru/Kiu Block 7/1744.
  - b. The Defendant be and hereby ordered to vacate the suit land within a period of 15 days from the date of the judgement in default eviction orders to issue.
  - c. It is hereby ordered that the Defendant do demolish all the structures on the parcel of land known as Title No. Ruiru/Kiu Block 7/1744 within a period of 15 days from the date of the judgement in default the Plaintiff be at liberty to demolish them and recover the costs from the Defendant.
  - d. A permanent injunction against the Defendant either by herself, her agents or servants from interfering whatsoever with the parcel of land known as Title No. Ruiru/Kiu Block 7/1744 be and is hereby issued.
  - e. Mesne profits is declined.
  - f. I make no orders as to costs.
25. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 16<sup>TH</sup> DAY OF FEBRUARY 2024 VIA MICROSOFT TEAMS.**

**J G KEMEI**



## **JUDGE**

Delivered online in the presence of;

Karuga for the Plaintiff

Defendant - Absent

Court Assistants – Phyllis/Oliver

