



**Wanjiku v Mwangangi (Environment & Land Case E127 of 2023)
[2024] KEELC 14176 (KLR) (30 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 14176 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E127 OF 2023**

**MD MWANGI, J
APRIL 30, 2024**

BETWEEN

HANNAH WANJIKU PLAINTIFF

AND

MICHAEL MUCHATHA MWANGANGI DEFENDANT

JUDGMENT

Background

1. The Plaintiff in this case is the registered proprietor of the parcel of land known as L.R. No. Dagoretti/Riruta/4499, while the Defendant is the proprietor of the adjacent parcel of land known L.R. No. Dagoretti/Riruta/4498. The Plaintiff's claim is that the Defendant has encroached into his land and has unlawfully occupied an area measuring 274.19 square metres. The Defendant went farther and erected a perimeter wall enclosing the Plaintiff's encroached portion purporting it to be part of his land.
2. It is the Plaintiff's case that the Land Registrar assisted by the Regional Surveyor, Nairobi area made a determination on the boundary between her and the Defendant's parcel upon visiting the two properties and indeed confirmed that the Defendant had encroached into the Plaintiff's land and occupied 274.19 Sq. metres of the Plaintiff's land. The Land Registrar established and fixed the correct boundary points. The Defendant has however, adamantly refused to demolish the perimeter wall and place it at the correct boundary points. He continues to illegally and unlawfully occupy the Plaintiff's portion.
3. This is what necessitated the filing of this suit. The Plaintiff prays for the demolition of the perimeter wall erected by the Defendant and further for an order of permanent injunction to restrain the Defendant from encroaching, entering, occupying, or in any other manner interfering with the Plaintiff's property. She additionally prays for general damages for trespass and costs of the suit.



4. Despite service, the Defendant did not enter appearance neither did he file a statement of Defence. The Plaintiff's case therefore proceeded to hearing by way of formal proof.

Evidence adduced:

5. In her evidence, the Plaintiff adopted her witness statement dated 28th March, 2023 which reiterates the averments in her plaint. She confirmed reporting the dispute to the Land Registrar who visited and established the boundaries between her land and the Defendant's parcel of land in the presence of the Defendants.
6. In spite of the determination of the boundary issue between the Plaintiff and the Defendant, the Defendant has stubbornly refused to move from the Plaintiff's portion of Land and continues to occupy the same from the 17th June, 2022.
7. The Plaintiff called as her witness one Miriam Wanjiru Kigathi, a surveyor from the Nairobi Regional Surveyor's office. The witness, PW2, testified that she is responsible for dealing with land disputes in Nairobi. She confirmed receiving a letter from the Chief of Riruta Location requesting her office to establish the boundary beacons of L.R. No. Dagoretti/Riruta/4499.
8. In carrying out the assignment, PW2 issued summons to the proprietors of the neighbouring properties abutting the Plaintiff's parcel of land being L.R. No. Dagoretti/Riruta/4498 and 4497. She carried out the assignment in the presence of the Chief and the two neighbours (the proprietors of L.R. No. Dagoretti/Riruta/4498 and Dagoretti/Riruta/4497. She established the boundary using the Registry Index Map Sheet No. 11. She made the report marked as PE3 and the skeleton plan showing the encroachment which was marked as PE4.
9. It was the testimony of PW2 that the encroachment by the Defendant into the Plaintiff's land covers an area of 280 Sq. metres which is the equivalent of a plot measuring 40 feet by 80 feet. It is an encroachment and not a boundary dispute. DW2 confirmed that she showed the Defendant the beacons to his own land.

Court's Directions:

10. Upon close of the Plaintiff's case, the Court directed the Plaintiff to file written submissions. The Plaintiff complied and filed the submissions dated 7th March, 2024. I have read and considered the said submissions which form part of the record of this court.

Issues for Determination

11. Having considered the Plaint filed in this case, the evidence adduced and the submissions filed by the Plaintiff, the issues for determination in my opinion are as follows:
 - A. Whether the Plaintiff has proved encroachment into her land by the Defendant.
 - B. Whether the Plaintiff is entitled to the orders sought in her plaint.
 - C. What is the measure of General damages that the Plaintiff is entitled to, if at all?
 - D. What orders should issue in respect to the costs of this suit?



Analysis and Determination:

A. Whether the Plaintiff has proved encroachment into her Land by the Defendant.

12. In addition to her own testimony, the Plaintiff called a Surveyor from the Nairobi Regional Surveyor's office as her witness. The witness who is a Surveyor presented evidence before the Court that demonstrated the extent of encroachment into the Plaintiff's land by the Defendant. The said evidence is in form of a report and a sketch map showing the extent of the encroachment. It is further backed by a google image of the three neighbouring parcels of land and which was marked as PE5.
13. Having considered the report by the surveyor, and the accompanying documents, I have no doubt in my mind that the Plaintiff has indeed proved and established that the Defendant has encroached into her land, Dagoretti/Riruta/4499.

B. Whether the Plaintiff is entitled to the orders sought.

14. In view of my above finding in (A) above, on the encroachment into the Plaintiff's land, I do find and hold that the permanent wall erected by the Defendant purportedly to mark the boundary between the Plaintiff's parcel and the Defendant's parcel is actually in the Plaintiff's parcel of land and the same must be demolished. The surveyor identified the beacons between the two parcels of land in the presence of the area chief and the two parties. The Defendant is aware but has continued to illegally occupy the Plaintiff's parcel of Land.
15. Therefore, the Defendant is hereby ordered to demolish the said perimeter wall at his own cost and to remove all the debris from the Plaintiff's land in the next thirty (30) days, failing which the Plaintiff is authorized to demolish the same, without any further reference to this Court, under the supervision of the OCS, Riruta Police Station.
16. The Defendant is further restrained by way of a permanent injunction from any further encroachment, entry and or occupation of the Plaintiff's parcel of Land L.R. No. Dagoretti/Riruta/4499.
17. In respect to the prayer for general damages for trespass, the Plaintiff has rightly submitted that trespass to Land is actionable per se. From the surveyor's report produced as an exhibit in this case, it is clear that the Defendant has encroached into the Plaintiff's Land. The Defendant is therefore liable for trespass to Land.
18. The Halsbury's Law of England, 4th Ed, Vol 45 at para. 26 provides that:

“If the Plaintiff proves the trespass, he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the Defendant has caused the Plaintiff actual damages, he is entitled to receive such amount as will compensate him for his loss.”
19. In the case of Duncan Nderitu Ndegwa –vs- KP & LC Ltd and Another [2013] eKLR, Nyamweya, J (as she then was) stated that:

“Once trespass to Land is established, it is actionable per se, and indeed no proof of damages is necessary for the court to award general damages.”
20. In this case, the Plaintiff has established trespass into her land by the Defendant. In her testimony, the Plaintiff stated that the Defendant has unlawfully occupied her Land since 17th June, 2022. At the time of this judgment, that is a period of almost 2 years. The surveyor described the encroachment by the Defendant into the Plaintiff's Land as covering an area equivalent to a 40 feet x 80 feet plot.



21. Considering all the foregoing, the Court awards the Plaintiff general damages of Kshs 500,000/= against the Defendant for trespass to land. The said sum of Kshs 500,000/= shall attract interest at Court rates from the date of this judgment until payment in full.
22. Finally, on the issue of costs, the Court awards the Plaintiff the costs of this suit against the Defendant with interest at court rates from the date of assessment until payment in full.

Conclusion:

23. The Conclusion of this matter is that the Plaintiff's case against the Defendant succeeds in the following terms:
 - i. The Defendant is hereby ordered to demolish the perimeter wall erected on the Plaintiff's land and to remove all the debris from the Plaintiff's land at his own cost in the next thirty (30) days, from the date of this judgement, failing which the Plaintiff is authorized to demolish the same, without any further reference to this Court, under the supervision of the OCS, Riruta Police Station.
 - ii. An order of permanent injunction is hereby issued in favour of the Plaintiff against the Defendant restraining him from any further encroachment, entry and or occupation into the Plaintiff's parcel of Land L.R. No. Dagoretti/Riruta/4499.
 - iii. The Plaintiff is awarded general damages of Kshs 500,000/= against the Defendant for trespass to land with interest at Court rates from the date of this judgment until payment in full.
 - iv. The Court awards the Plaintiff the costs of this suit against the Defendant with interest at court rates from the date of assessment until payment in full

It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 30TH OF APRIL, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Wangechi h/b for Mr. Chege for the Plaintiff

N/A for the Defendant

Yvette: Court Assistant

M.D. MWANGI

JUDGE

