



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

Civil Suit 88 of 2004

MARY CHELANGAT CHESIRSIR.....PLAINTIFF

VERSUS

CHARLES RUTO.....1ST DEFENDANT

NICHOLAS RUTO.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

The plaintiff, Mary Chelangat Chesirsir sued the defendants, Charles Ruto, Nicholas Ruto and the Attorney-General seeking orders of eviction of the 1st defendant from parcel number **NAKURU/SURURU/330**. The plaintiff further sought permanent orders restraining the 1st and 2nd defendant from entering occupying, cultivating, erecting any structures or in any other manner dealing with L.R. No. **NAKURU/SURURU/330**. The plaintiff further sought a declaration of this court that the acts of the 1st and 2nd defendant of removing the beacons from and altering the boundary of the suit land were illegal. The plaintiff further sought the order of this court to compel the 1st and 2nd defendants to restore the beacons and the boundary to its original position. Finally the plaintiff prayed to be awarded general damages for the demolished house and the trees that were cut down by the 1st defendant. The three defendants were duly served with the summons to enter appearance together with the copy of the plaint. The 1st defendant did not enter appearance. Interlocutory judgment was entered against the 1st defendant in default of entering appearance. The 2nd and 3rd defendants entered appearance and raised a preliminary objection to the suit filed against them on the ground that the plaintiff's suit was time-barred. This court in its ruling delivered on the 21st of February 2005 struck out the suit against 2nd and 3rd defendants after it upheld the preliminary objection raised by the said defendants that the suit filed against them was barred by the provisions of **Section 3(1) of the Public Authorities Limitations Act**. The plaintiff was however allowed to proceed with her suit against the 1st defendant. The plaintiff then listed this case for formal proof. After this court was satisfied that the 1st defendant had been properly served and the interlocutory judgment properly entered, it ordered the plaintiff to proceed with her suit.

In her evidence before court, the plaintiff testified that she was allocated parcel number **NAKURU/SURURU/330** by the Government of Kenya in 1997. She was duly issued with a title deed of the said parcel of land. Although the title was dated the 16th of July 1997, she was issued with the same in 1999. The land measured five acres.

The plaintiff produced the said title in evidence as plaintiff's exhibit No. 1. She testified that she knew the 1st defendant. It was her testimony that the 1st defendant entered her parcel of land in 1997 without her permission and burnt vegetation thereon.

She stated that the 1st defendant moved into her said parcel of land and destroyed the trees and started

cultivating the same. She reported the matter to the village elders who advised her to report the matter to the area Chief. Unfortunately for the plaintiff, the chief did not do anything but instead offered support to the 1st defendant. The elders were not able to assist the plaintiff by having the dispute resolved.

The plaintiff further testified that at the time (*in 1997*) the 1st defendant was not residing on the suit land but was resident in a neighbouring parcel of land owned by the 1st defendant's father. The plaintiff testified that in 1999 the 2nd defendant entered the suit land without her permission or consent, took measurements thereof, removed the beacons and blocked a road which was passing next to the suit land. The plaintiff testified that the said removal of beacons was undertaken forcefully by the 2nd defendant at the behest of the 1st defendant. The plaintiff again reported the matter to the Local District Officer but nothing fruitful came from a meeting which had been convened by the District Officer. In July 2003 when the plaintiff started constructing a house on the suit land, the 1st defendant demolished the house which was incomplete and used the same materials to build his house on the suit land. The plaintiff claimed that although the 1st defendant owned parcel number **NAKURU/SURURU/306**, the 1st defendant had moved into and taken residence on the suit land.

The plaintiff further testified that the 1st defendant had since his occupation of the suit land destroyed all the indigenous trees that were on the suit land and used the same to burn charcoal. The plaintiff stated that the cost of the house which was demolished by the 1st defendant was Kshs 20,000/=. It was her testimony that there were more than forty indigenous trees on the suit land by the time she was forcefully removed from the suit land. The plaintiff urged the court to grant her prayers as sought in the plaint and order the 1st defendant removed from the suit land. She also asked the court to order the 1st defendant to pay damages for the trees destroyed and the plaintiff's house which was demolished.

The plaintiff testified that the 1st defendant was occupying two acres of the suit land. The plaintiff conducted a search of the suit property at the Lands Office, Nakuru which search revealed the plaintiff to be the owner of the suit land. The certificate of search was produced as plaintiff's exhibit No. 2. The plaintiff testified that in spite of the 1st defendant being issued with a demand notice to vacate the suit land, he had ignored the said notice (*copy of the Notice produced as plaintiff's exhibit No. 3*). The plaintiff asked the court to award her damages and order that the beacons be restored to its rightful position as was surveyed and demarcated in 1995.

I have considered the pleadings filed by the plaintiff in this case. I have also carefully considered the evidence which was adduced by the plaintiff in support of her case. The issue for determination is whether the plaintiff has established that she is the owner of the suit land. The other issue for determination is whether the plaintiff has proved on a balance of probabilities that she is entitled to the prayers sought in her plaint. According to the plaintiff, she was allocated five acres by the Government of Kenya at Sururu. She was shown the specific five acres on the ground. She took possession of the said parcel of land in 1997. She was later issued with a title deed to the said parcel of land. The said parcel of land registered in her name is known as **NAKURU/SURURU/330**. She produced a copy of the title of the said parcel of land as plaintiff's exhibit No. 1. A search of the register at the land registry revealed that the plaintiff was so registered (*certificate of search produced as plaintiff's exhibit No. 2*). It was her evidence that the 1st defendant, with the assistance of the local Chief entered her said parcel of land, removed the established beacons and excised therefrom two acres and transferred it to the 1st defendant. The plaintiff's efforts to have the said matter adjudicated at the local provincial administration level had been in vain. In 2003, when the plaintiff attempted to build a house on the said parcel of land, the 1st defendant demolished her house and expropriated the building materials for his own use. The 1st defendant used the very same materials to build a house on the said parcel of land. The plaintiff testified that the costs of the said materials was Kshs 20,000/=.

I have evaluated the said evidence adduced by the plaintiff. The plaintiff has established that she is the owner of all that parcel of land known as **NAKURU/SURURU/330**. She is the registered owner of the said parcel of land. In Kenya, once a party produces a title to a parcel of land in evidence, unless otherwise established, the said title is a prima facie proof that such a party is the owner of the said parcel of land. In this case the plaintiff has established that she is the owner of the suit land. She is therefore entitled to all rights that go with ownership of the land. This includes possession and not being interfered

with in her occupation and utilization of the said parcel of land.

In the instance case, the plaintiff has established, on a balance of probabilities, that the 1st defendant trespassed into the suit land, without her consent, and built thereon a house. The 1st defendant with the assistance of the provincial administration removed the beacons indicating the boundaries of the suit land owned by the plaintiff. She further proved that the 1st defendant unlawfully and without any justifiable cause damaged her house. The plaintiff has proved her case against the 1st defendant.

Judgment is therefore entered for the plaintiff against the 1st defendant as hereunder:-

(i) The 1st defendant is hereby ordered to give vacant possession of all that parcel of land known as NAKURU/SURURU/330 to the plaintiff within thirty (30) days of the service of the decree of this court, in default the plaintiff be at liberty to take legal measures to have the 1st defendant evicted from the suit land.

(ii) The 1st defendant is hereby permanently restrained from entering, occupying, cultivating, erecting structures or in any manner dealing with the suit land, NAKURU/SURURU/330.

(iii) The plaintiff is awarded general damages of Kshs 20,000/= being on account of the house which was destroyed by the 1st defendant.

(iv) The plaintiff shall have the costs of this suit.

DATED at NAKURU this 1st day of July 2005.

L. KIMARU JUDGE