

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ELC CASE NO.18 OF 2012

NAHOCO HOUSING CO-OP SOCIETY LTD..... PLAINTIFF

VERSUS

ESTHER MUENI WAMBUA 1ST DEFENDANT

J U D G M E N T

1. By a **Plaint** dated **25.1.2012** and filed on 31.1.2012 the Plaintiff seeks order of eviction, permanent injunction, mesne profit over **Donyo Sabuk/Kimarock Block 1/24376** against the Defendant plus costs. The Defendant was served with summons but failed to enter appearance or defence. The case was formally proved on 10/11/2014 and submissions thereafter filed on 9.12.2014.
2. The Plaintiff is a Housing Co-operative Society that buys land and subdivides it among its members. The Plaintiff testified via its chairman Peter Murimi Muriithi. He testified that the Plaintiff bought 10 acres of land from the Defendant. A sale agreement P. Ex.1 was produced. A title was issued to the Plaintiff for suit land vide P. Exhibits 2. A search certificate was produced to show current area vide P. Exhibit 3. Further P. Exhibit 4 was an acknowledgement of payment of the entire purchase price KShs.4.5 million.
3. The Plaintiff was thereafter not able to take actual possession due to interference by the Defendant who claimed to be the wife of vendor. On 17.2.2011 the Defendant with a group of youths attacked Plaintiff members who had visited suit land. The Plaintiff obtained injunction thereafter on 26.3.2012. Despite the order, the Defendant had continued harvesting sand from the suit land claiming that she was not given part of purchase price while the vendor stated that she had her parcel No.Donyo Sabuk/Komarock Block 1/166. The Plaintiff therefore prays for the reliefs in the Plaintiff.
4. The Defendant has failed to defend the suit herein and rightly so as the document produced showed she had no registrable interest over suit land. The provisions of Section 26 of Land Registration Act 2012 states that the title deed is a *prima facie* evidence of ownership. The Defendant has not rebutted or impugned the title of the suit land held by the Plaintiff. As far as the Plaintiff owns the suit land, the same is protected by Article 40 of the Constitution of Kenya. The right to occupy, use and even alienate cannot be interfered with by defendant without any legal justification.
5. The court finds that the Plaintiff has proved its case on balance of probability in terms of prayers **(a)**, **(b)** and **(d)** of the Plaintiff. Prayer No. **(c)** was to be proved with some evidence such as how much sand was being harvested and sold or other income expected from the land which the Plaintiff was deprived since the land vested in it.
6. The court thus makes the following orders:
 1. Prayers (a), (b), (d) of the Plaintiff are granted.
 2. Prayer C is rejected.
 3. Costs to the Plaintiff.

Dated and Delivered at Machakos, this 27th day of February, 2015.

CHARLES KARIUKI

JUDGE