



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 260 OF 2013

LUCY MUTHONI KAGWITHI
PLAINTIFF

VERSUS

JOHNSON IRERI NJIRU1ST DEFENDANT/APPLICANT

JACINTA NGUNGI NDWIGA 2ND
DEFENDANT/APPLICANT

JUDGMENT

The plaintiff filed this suit on 22nd June 2012 seeking the following prayers against the defendants:-

- a. An order that the defendants vacate the plaintiff's parcel of land number KYENI/KIGUMO/6513 or be evicted therefrom**
- b. Costs of this suit**
- c. Any other or further relief that this Court may deem fit to grant**

-The claim was premised on her pleadings that she is the registered owner of the land parcel No. KYENI/KIGUMO/6513 (hereinafter the suit land) having bought it from the previous owners JANET WAMBUGI NJAGI, FRANCIS MWANIKI MUTUA, ANSELIMU NJAGI KAMANJA and NICHOLAS M. MUTUA vide an agreement dated 14th July 2011. The defendants have however trespassed onto the said suit land hence this suit.

The two defendants filed their respective defences through the firm of Momanyi Gichuki & Co. Advocates in which they basically denied all the plaintiff's averments adding that a Preliminary Objection would be raised to have the suit struck out as being bad in law.

When the suit came up for hearing on 16th July 2014, there was no appearance by the defendants although Ms Ndirangu appeared on behalf of their counsel and sought an adjournment which was objected to by Mr. Ithiga for the plaintiff. The Court delivered a ruling rejecting a further application for adjournment reasons whereof are contained in that ruling. The plaintiff then proceeded to lead evidence in support of her case and called one witness.

In her testimony, the plaintiff said that on 14th July 2011 she bought the suit land from JANET WAMBUGI NJAGI, FRANCIS MWANIKI, ANSELIMU NJAGI and NICHOLAS MUTUA. She produced the sale agreement (Exhibit 1) which however does not contain the names of FRANCIS

MWANIKI. It is clear however that what was being purchased was part of the original land parcel No. KYENI/KIGUMO/1450. She said she bought the land for Ksh. 1.2 million and after the necessary consent and sub-division, she obtained the title to the suit land (Exhibit 3). The suit land is 4 acres but the defendants are occupying 1 ¼ acres which they have refused to vacate notwithstanding that they have been served with a notice to vacate. That gave rise to this suit.

She called as a witness ANSELIMU NJAGI KAMANJA (PW2) who confirmed that he was one of those who sold the suit land to the plaintiff and that the defendants are trespassing thereon.

I have considered the evidence of the plaintiff and her witness. The same is un-controverted save for the filing of a defence which was not prosecuted because the defendants were not in court at the time of the trial and an attempt to adjourn the suit was rejected for reasons given earlier. The plaintiff has produced as part of her evidence a title deed to the suit property dated 14th December 2011 issued under the now repealed **Registered Land Act**. Registration of a person as the proprietor of land gives such person the rights and privileges provided for under **Sections 22 and 28** of the then **Registered Land Act** and also **Sections 24 and 25** of the new **Land Registration Act**. Such registration is only subject to the overriding interests provided for in law and can also be challenged if obtained by fraudulent means. Looking at the defence filed herein, it is not pleaded anywhere that the plaintiff obtained the title to the suit land through fraudulent means or is holding the same in trust for the defendants. All that the defendants have done is deny the plaintiff's averments in their defence. But as the defendants did not attend court, what I have is only the un-controverted evidence of the plaintiff.

Believing the plaintiff's un-controverted evidence as I do, and having also looked at the documentary evidence produced herein, I am satisfied that the plaintiff has established her case against the defendants as required in law. I accordingly enter judgment for her as prayed with costs.

B.N. OLAO

JUDGE

25TH SEPTEMBER, 2014

25/9/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Ithiga for Applicant - present

Respondent - absent

COURT: Judgment delivered this 25th day of September, 2014 in open Court.

Mr. Ithiga for Plaintiff present

No appearance for Defendant

Right of appeal explained.

B.N. OLAO

JUDGE

25TH SEPTEMBER, 2014

MR. ITHIGA: This was an Embu matter. Could it be taken there for execution purposes?

COURT: This being a matter for Embu it is hereby transferred to Environment and Land
Court Embu.

B.N. OLAO

JUDGE

25TH SEPTEMBER, 2014