



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT AND LAND COURT

E.L.C. NO.1 OF 2013

PRISCILLA NYAMBURA NGUMI.....PLAINTIFF

VERSUS

IRENE NGIMA MUNYIRI.....DEFENDANT

J U D G M E N T

The plaintiff is the registered owner of all the parcel of land known as Naromoru/Kiamathage/1/215. On or about 11th May 2000, the plaintiff purchased the parcel of land known as Naromoru/Kiamathege Block 1/215 registered in the name of the defendant, in a public auction conducted by M/s El-dima Auctioneers Limited who sold the same under instructions from Barclays Bank of Kenya Limited at a purchase price of Kshs.152,000/=.

The plaintiff immediately deposited Kshs.38,000/= to the Auctioneers as part payment of the purchase price. The plaintiff avers that she she paid the balance of the purchase price in full by cheques to the chargee and the property was transferred unto her name. The plaintiff having obtained all the necessary documents from the above said bank for the purpose of transfer including letter of consent from the Land Control Board, she went ahead and transferred the parcel of land Naromoru/Kiamathage Block 1/215 from the defendant's name into the plaintiff's name.

The plaintiff further avers that in the year 2005 the defendant, his agents and or servants trespassed on the suit land and started living on the same denying the plaintiff access to her land. The plaintiff claim against the defendant is for a declaration that the plaintiff is the rightful registered owner of the parcel of land known as Naromoru/Kiamathage Block 1/215 and the defendant, his agents and or servants are living on the land illegally and they be ordered to vacate from the same.

The plaintiff has suffered loss and damage since she purchased the above said piece of land as she has not gained vacant possession thereof. That the plaintiff avers that there is no suit pending and there have been no previous proceedings in any court over the same subject matter. Despite demand having been made and notice of intention to sue given the defendant has refused and or failed to vacate the parcel of land known as Naromoru/Kiamathage Block 1/215 rendering this present suit necessary.

The plaintiff avers that there is no other suit pending and that there have been no previous proceedings in any other court between the plaintiff and the defendant under the same subject matter.

By plaint dated 31/12/2012 she prays for judgment against the defendant for;

a. *A declaration that the plaintiff is rightful registered owner of parcel of land known as*

Naromoru/Kiamathage Block 1/215.

- b. An eviction order directing the defendant her agent and or servants to vacate the parcel of land known as Naromoru/Kiamathage Block 1/215.***
- c. Costs of this suit.***
- d. Any other relief that this Honourable Court may find just and fit to grant.***

The defendant was served with summons to enter appearance but failed to do so hence interlocutory judgment was entered on the 16/9/2013 and the matter set for formal proof.

On the 27/5/2014 the plaintiff testified and stated that she is a retired civil servant who does farming in Nakuru. She relied on her statement filed on 4/1/2013 but added that the land in issue was advertised in the newspapers for sale by Barclays Bank. She paid Barclays Bank the sale price through Account No.T1/029. She went through the Kieni East Land Control Board.

She produced the Daily Nation advertised for sale, she produced the title deed, the search certificate, sketch map of cheques for payment, the transfer by chargee in exercise of power of sale, application for consent of the Land Control Board, the consent of the Land Control Board, receipts as evidence of payment of stamp duty and a letter by K. Maina advocates and demand notice.

All the above indicate that the plaintiff followed the right procedure to be registered as the proprietor of the suitland.

She seeks an order of eviction against the people squatting on her land. She has asked them to vacate but they have refused.

This court finds that the plaintiff has proved on a balance of probabilities that the land in dispute is registered in her name. The same was registered in her name on the 22/5/2002 and title issued on 11/6/2002. she was registered as the absolute proprietor of the land comprised in title number Naromoru/Kiamathage Block 1/215 with approximate area of 2.01 Ha. in registry map sheet No.1.

It is trite law that once a person is registered as the absolute proprietor of a parcel of land he owns an indefeasible title that cannot be defeated by any other interest save the overriding interest. The land was registered under Registration Land Act Cap 300 Laws of Kenya (repealed). This Act was repealed by the Land Registration Act No.3 of 2012. Section 24 of the Act vests in a person registered as a proprietor of land the absolute ownership of that land together with rights and privileges belonging or appurtenant thereto.

The plaintiff was issued with a certificate of title in the favour of a title deed which is conclusive evidence of proprietorship.

The upshot of the above is that the court holds that the plaintiff is the proprietor of the parcel of land in dispute hence entitled to the prayers sought in the plaint.

I do make a declaration that the plaintiff is the rightful registered owner of the parcel of land known as Naromoru/Kiamathage Block 1/215 and therefore do order that the defendant, her agents and her servants do vacate the said parcel of land within one month failure of which they be evicted forcefully by the plaintiff. Costs of the suit to be borne by the defendant. Orders accordingly.

Dated, signed and delivered at Nyeri this 24th day of September 2014.

A. OMBWAYO

JUDGE