



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT AT NYERI

E.L.C. NO.12 OF 2013

SAMUEL KIURIRE GICHIA.....PLAINTIFF

VERSUS

HASSAN KIMANI ZULA.....DEFENDANT

J U D G M E N T

The plaintiff's claim is that on or about 7th August 2012, he bought plot No.59 Mjini within Murang'a Municipality from one Hassan Kimani the grandfather to the defendant herein and transfer of the plot was duly effected.

Despite the transfer and plaintiff's demand that he vacates the plot, the defendant has refused, failed or neglected to quit, vacate or otherwise clear from the plaintiff's said plot.

The plaintiff states in the plaint that he has been deprived the use and enjoyment of the said plot and has suffered and continues to suffer irreparable loss and damage.

The plaintiff prays for an order of eviction of the defendant, his agents, servants or any person from the said parcel of land plot No.59 Mjini within Murang'a Municipality. He prays that the O.C.S Murang'a, do supervise the said eviction. The summons to enter appearance together with the plaint, verifying affidavit, plaintiff's statement, list of witnesses and documents were served accordingly. The defendant failed to enter appearance and did not file a defence. The plaintiff requested for judgment in default of appearance and defence and the same was duly entered on 14/3/2013. The case was fixed for formal proof on 17/7/2013.

In his statement, the plaintiff states that he is the sole proprietor of plot No.59 Njini within Murang'a Municipality having bought it from one Hassan Ali Kimani the grandfather of the defendant. Prior to the purchase of the said plot the said defendant who is the grandson to the original owner, Hassan Ali Kimani had occupied a temporary structure on the said plot which belonged to his grandfather.

Hassan Kimani Zulu who is the son of the Hassan Ali Kimani has been given notice to quit and/or vacate the plot but he has refused.

When the matter came for formal proof the plaintiff stated under oath that he is an assistant chief of Karuri sub-location in Murang'a town within Murang'a county. He entered into an agreement with the defendant's grandfather on 7/8/2012 for the purchase of all the property known as PLOT NO.59 MJINI within Murang'a Municipality for a consideration of Kshs.400,000/=. The terms and conditions of the agreement were as follows:

- 1) That the vendor shall sell and the purchaser shall buy the above said plot at the above**

agreed consideration.

2)

3) **That the vendor acknowledges receipt of Kshs.300,000/= upon the execution of this agreement.**

4)

5) **That the balance of Kshs.100,000/= shall be paid upon transfer.**

6)

7) **That the purchaser shall take vacant possession after transfer.**

8)

9) **That the vendor herein shall take all the necessary steps to have the plot transferred into the purchaser's name.**

10)

11) **That this transaction should not take more than two (2) months from the date hereof.**

12)

13) **That legal fees hereof shall be paid by the purchaser.**

14)

15) **That should the vendor fail to honour this agreement he shall refund the amount paid to him plus 100% interest on top together with all other expenses as shall have been incurred by the purchaser while the purchaser shall receive back his money without any interest in case he breaches this agreement.**

16)

On the date of the agreement he paid Kshs.300,000. On the 8/8/2012 he paid the balance of Kshs.100,000. He produced the agreement and acknowledge of payment as exhibit 1 and 2 respectively.

He obtained a consent from Murang'a Municipal Council for change of registered ownership on the 15/11/2012. He produced the consent as P.Exhibit 3.

On the 17/12/2012, he sent a demand letter to the defendant requesting him to vacate the plot but the defendant has not done so. He applies for an order of eviction and costs of the suit.

I have considered the evidence on record and do find that the letter dated 15/11/2012 vested the plot No.Mjini/59 to Samuel Kiurire Gichia with all rights appurtenant thereto and all responsibilities and liabilities pertaining the said parcel of land.

The defendant having failed to enter appearance and defence the court had no alternative but hear and believe the assertions of the plaintiff and there being no justification given by the defendant, to occupy the suit land, I do find his occupation of the said land illegal and do grant prayer as, b and c of the plaint. Orders accordingly.

Dated, signed and delivered at Nyeri this 24th day of July 2013.

A. OMBWAYO

JUDGE