

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

ENVIRONMENT & LAND COURT

E.L.C. NO.112 OF 2013

BIANCA KABURA MWANGI.....PLAINTIFF

VERSUS

JAMES KINUTHIA MWANGI.....DEFENDANT

J U D G M E N T

The plaintiff avers that she is the registered proprietor of land parcel **No.LOC.8/YAMUGWE/1246**. She is the mother of the defendant. The defendant occupies a portion of the suit land.

The plaintiff avers that she gave the defendant a defined portion of the suit land to occupy and cultivate but the defendant has adamantly refused to vacate the said portion which the plaintiff intends to give to another person. . The intention of the plaintiff is not to disinherit the defendant but to relocate him to the defined portion. The plaintiff prays for an order to evict the defendant from the portion he is occupying in land parcel number Yamugwe/1246 to the defined portion set aside for him by the plaintiff. She is also praying for costs and interest of the suit.

The defendant was served with summons to enter appearance together with plaint and failed to enter appearance or file defence within the stipulated time and upon request for judgment against the defendant filed by J.M. Njoroge Advocate for the plaintiff, interlocutory judgment was entered on 12th July 2013.

The matter came up for formal proof on 23/9/2013. The plaintiff Bianca Kabura Mwangi stated that she is the registered proprietor of the parcel of land **LOC.8/YAMUGWE/1246**. The defendant is her son who stays and works in Nairobi as a painter and resides on the suit land. She intends to give him a different portion of the land. The two are not in good term as the defendant has even assaulted her. She is ready to give him another portion of land near Mugoini Girls High School.

The plaintiff produced a certificate of official search in respect of LOC.8/YAMUGWE/1246 issued on the 5th of June 2013 that indicates that she is the absolute proprietor of the parcel of land and was issued with the title on the 22/2/2001.

Section 24 of the Land Registration Act No.3 of 2012 vests in a person registered as a proprietor of land to absolute ownership of that land together with all rights and privileges appurtenant thereto.

Section 25 protects the rights of a proprietor and that the same are not liable to be defeated except as provided by the Act and shall be held by the proprietor, together with all priviledges and appurtenances belonging thereto free from all other interests and claiming whatsoever but subject to the leases charges and other encumbrances and to the condition and restriction if any show in the register and to such liabilities and interest as affect the same and are declared by Section 28 not to require nothing on the register unless the contrary is exposed in the register.

The defendant was served but neither entered appearance nor filed defence.

I do find that the plaintiff has proved his case on a balance of probabilities and do grant prayers a of the

plaint. There will be no orders as to costs.

Dated and Delivered at Nyeri this 11th day of October 2013

A. OMBWAYO

JUDGE