



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISII

Civil Suit 58 of 2011

EMILY MWIKALI PLAINTIFF

VERSUS

EMMA WAIYUA 1ST DEFENDANT

PAUL MUSYOKI NDUVA..... 2ND DEFENDANT

CHARLES KIETI 3RD DEFENDANT

MOSES NDUMBO 4TH DEFENDANT

JUDGMENT

Emily Mwikali is the plaintiff in this suit. She has sued the defendants namely; Emma Waiyua 1st defendant, Paul Musyoki Nduva 2nd defendant, Charles Kieti 3rd defendant and Moses Ndumbo 4th defendant. The plaintiff seeks the following orders against the defendants;

- a) An order for the eviction of the Defendants from and delivery of vacant possession to the Plaintiff of all that parcel of land known as NAIROBI/BLOCK 119/3226.
- b) Mesne profit at the current rental market rates for the buildings on the property.
- c) Any other or further relief this court deems fit to grant.

The defendants were served and did not enter appearance.

Interlocutory judgment was entered against all the four defendants on the 31st March 2011.

The plaintiff thereafter set the matter for hearing and this is the plaintiff evidence in brief:

Her late mother Elizabeth Ngina Nduva who died on the 5th of February 2002 owned plot number A 25 at Githurai and was given a plot certificate (exhibit 2). The Plaintiff subsequently obtained a certificate of title NAIROBI/BLOCK 119/3226. (Exhibit 3)

She took out succession proceedings in respect of her late mother's property and obtained a letter of grant

(Exhibit 4) which was subsequently confirmed and the subject plot is listed as among the assets. She is therefore now the registered owner of the said plot, NAIROBI/BLOCK 119/3226.

According to the plaintiff the defendants in this case are trespassing in the said parcel of land as they are staying there without her consent. The plot has 20 houses, which were built by her late mother and the defendants collect rent of 2000/= from each house.

She therefore seeks an order of eviction of against the defendants and to be paid the rental income the defendants have been collecting from the houses plus cost of suits.

At the close of the plaintiff's case counsel submitted that based on the evidence adduced in court the plaintiff has proved her case and judgment should be given as prayed for in prayers (a) to (d). On prayer (b) he urged the court to consider the plaintiff evidence on the rental income in arriving at the mesne profit which he asked this court to calculate from the date she was issued with the letters of administration that is 15th December 2003.

I have considered the plaintiff's evidence together with what is pleaded in her plaint dated 26th of February 2011 and I find that the plaintiff has shown that her late mother owned plot A 25 at Githurai situated at LR. No. 5964/2 Githururai Tinga'anga'a Company Limited which plot after registration is now known as NAIROBI/BLOCK 119/3226. Her evidence that the defendants are in unlawful occupation of the suit property as trespassers and are collecting rent from the tenants occupying the houses built has not been challenged by the defendants. She has established on the evidence adduced that she is the owner of NAIROBI/BLOCK 119/3226 the subject property and the defendants have no right to occupy in the said premises. I therefore find that the defendants have no right in light of the evidence to occupy the suit premises. I therefore order that the defendants be evicted from the suit premises and deliver vacant possession to the plaintiff of NAIROBI/BLOCK 119/3226. The plaintiff has stated that the defendants collect rent of 2000/= from the 20 houses. I grant her mesne profit at the rate of 2000/= per month for the 20 houses the same shall be calculated from the date she obtained letters of grant 15th of December 2003. She is also awarded costs of the suit.

Dated and delivered this 31st day of January 2012.

R. OUGO
JUDGE