

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Civil Case 194 of 2009

JOSEPHINE NDINDA DAVIDPLAINTIFF

VERSUS

FLORENCE MUENI MULE.....DEFENDANTS

RULING

By virtue of a Plaint dated 17th June, 2009 and filed in court on 23rd June, 2009 **Josephine Ndinda David**, hereinafter “*the plaintiff*” sought as against **Florence Mueni Mule**, hereinafter “*the defendant.*”

a. A declaration that the defendant has no legal basis whatsoever to occupy the suit land known as Kangundo/Muisuni/3523(originally known as Kangundo/Muisuni/2047)

b. An order of eviction of the defendant from the said suit land known as Kangundo/Muisuni/3523(originally known as Kangundo/Muisuni/2047)

c. Costs and interest of this suit

d. Any other and/or further relief that this honourable court may deem fit and just to grant under the circumstances.

According to the plaintiff, she is the sole registered proprietor of all that piece of parcel of land known Kangundo/Muisuni/3523 hereafter “*the suit premises*” having acquired it from her late husband, **Francis David Kimali** by way of transmission. Apparently in 1993, the plaintiff’s deceased husband aforesaid had entered into a sale agreement with the defendant’s deceased mother, **Beatrice Mbula Mule** to sell her the suit premises. However, the defendant’s mother aforesaid failed to meet the terms of the agreement such that by the time she died on or about 4th, June, 1999, she had not paid the total purchase price nor had the requisite Land Control Board Consent for transfer been obtained. Following the death of the plaintiff’s husband and the defendant’s mother, the defendant without any colour of right whatsoever entered into the suit premises and took possession of the same by occupying a house built thereon by her deceased mother. Despite notice of institution and confirmation of grant of letters of administration in which the suit premises were transmitted to the plaintiff, the defendant had adamantly remained in occupation of the suit premises, hence the suit.

The defendant was duly served with summons to enter appearance. On 8th July, 2012, she duly filed memorandum of appearance in person. However, she did not follow it up with a defence. On 6th August, 2009, the plaintiff filed a request for interlocutory judgment which was acted upon on 7th October, 2009. The interlocutory judgment was entered subject to formal proof.

The formal proof was heard by me on 10th May, 2012. Only the plaintiff testified in support of her claim. Her evidence was a mere reiteration of what I have already stated above. Suffice to add that her deceased husband had intended to sell the suit premises to the defendant’s deceased mother at a consideration of Kshs. 235,000/=. The defendants mother immediately paid Kshs. 10,000/= as part of consideration leaving a balance of Kshs. 225,000/=. She never paid this balance until she passed on. The defendant too had not paid the same. However, she had forcefully entered the suit premises and remained thereon. She was a trespasser who ought to be evicted in the circumstances.

The plaintiff having closed her case opted to put in written submissions. I have carefully read and considered them.

The evidence of the plaintiff in support of her claim is unchallenged. It has not been rebutted. The agreement dated 8th September, 1993 tendered in evidence shows that indeed the plaintiff's late husband intended to sell to the defendant's mother $\frac{3}{4}$ of acre together with his house on the suit premises at a consideration of Kshs. 235,000/= out of which the purchaser only paid Kshs. 10,000/= leaving a balance of Kshs. 225,000/=. That amount remains unpaid to-date. It requires no gain saying that this was agricultural land. For the sale to go through, it required that the consent to the transaction be sought and obtained within 6 months of the agreement in terms of section 6 of the Land Control Act. It is evident that no such consent was obtained. By operation of the law therefore the sale agreement became void. There was no legal title to be passed to anybody since the original transaction became *null* and *void* for all intents and purposes on account of non-payment of full consideration as well as by operation of law.

The Plaintiff upon the demise of the vendor, filed succession cause No. 527 of 1999 in this court. She was subsequently granted a full grant. By the process of transmission, she became the registered proprietor of the suit premises. There is therefore no doubt at all that the defendant is a trespasser to the suit premises. She has no legal right to be in occupation of the suit premises. The plaintiff has thus proved her case on a balance of probability. Accordingly she is entitled to the prayers in the plaint. Prayers (a), (b) and (c) in the plaint shall forthwith issue.

DATED, SIGNED and DELIVERED at MACHAKOS this 28TH day of SEPTEMBER 2012.

ASIKE MAKHANDIA
JUDGE