

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 329 of 2012

CATHERINE NDEGWAPLAINTIFF

- VERSUS -

HIRAM KIRAGU KANIU1ST DEFENDANT

MICHAEL NGUGI KANIU.....2ND DEFENDANT

JUDGMENT

1. By a Plaint dated 22nd May, 2012, the Plaintiff claimed that she purchased the property known as LR No. Nairobi/Block 76/22 (hereinafter “the suit Property”) at a public auction on 26th February 2010 for a sum of Kshs.4,300,000/-. That she was subsequently registered as the owner of the suit property, that a suit filed by the Defendants challenging the sale had the Plaintiff’s name struck out therefrom. The Plaintiff claimed that the Defendants had nevertheless continued to be in occupation of the suit property. She therefore claimed for vacant possession, mesne profits, interest and costs.

2. The Defendants did not enter appearance upon being served with the summons and therefore judgment in default was entered against them on 6th July, 2012. The matter came up before me for formal proof on 10th October, 2012.

3. In her evidence, the Plaintiff swore that on 10th February, 2010, she saw an advertisement in the newspaper that Keysian Auctioneers were to sell a house erected on the suit property (Nairobi/Block 76/22 – Buruburu Phase III). She attended the public auction and her bid of Kshs.4.3M was accepted. She paid the purchase price with the assistance of a loan of Kshs.2M from the Housing Finance Corporation of Kenya and had a Certificate of title issued in her favour. That the Defendants filed HCCC No. 177 of 2010 against the auctioneer and herself. However, on 12th March, 2012 her name was struck out from that suit. That the Defendants had subsequently filed an application for account in that suit demonstrating that they no longer had any interest in the suit property. She further testified that she has been repaying the loan at Kshs.29,027/- per month from her salary yet the suit property could be fetching her monthly rental income of Kshs.42,000/- which she could use to repay the loan were it not for the Defendants who have continued to be in occupation thereof. She therefore urged the court to order for their eviction and mesne profits at Kshs. 42,000/- per month from 26th February, 2010 to date.

4. I have considered the averments in the Plaint and the Plaintiff’s testimony. Her evidence was not challenged and/or controverted. I have seen the advertisement on the Standard newspaper of 10th February, 2010. Therein Keysian Auctioneers advertised the sale by public auction on 26th February, 2010, of inter alia, the suit property identified therein as LR No. Nairobi/Block76/22, Buruburu Phase III House No. 22. The Plaintiff also produced a Memorandum of Sale dated 26th February, 2010 which showed that at the public auction she had purchased the suit property at Kshs.4.3M whereby she paid Kshs.1,375,000/- as deposit and the balance was payable within 30 days. The Plaintiff also produced a Certificate of Lease dated 27th September, 2010 wherein she is shown to have been registered as the owner of the suit property upon the registration of the transfer in her favour. In the encumbrance section of the title, there is a charge registered in favour of the Housing Finance of Kenya for Kshs.2 million. Produced also was an official search dated 5th October, 2010 which confirm the foregoing. Finally, amongst the exhibits produced was a chamber summons dated 25th July, 2011 filed in

HCCC No. 177 of 2010 (OS) Hiram Kiragu Kaniu & Anor –vs- Central Finance (K) Ltd & 2 others
wherein the Defendants in this case applied for accounts for the proceeds of the sale of the suit property.

5. In view of the foregoing, I am satisfied that the Plaintiff has proved her case to the required standard. She is the registered owner of the suit property and is entitled to possession thereof. I have not seen anything that can legally bar her from such possession. I believe that after the auction, the Defendants lost the right to possession of the suit premises. The Defendants have continued to be in occupation to date and have thereby denied the Plaintiff an opportunity to earn any income from the suit premises. I am satisfied that the Plaintiff is entitled to mesne profits.

6. It was the Plaintiff's testimony that the suit premises could fetch her Kshs.42,000/- per month as rent. She prayed for this sum from the 26th February, 2010 to date. I have no reason to doubt that Kshs.42,000/- may be a fair figure payable as rent for such a premises in Buruburu Phase III. I therefore allow that figure as mesne profits per month. However, since there was no evidence to show that the Plaintiff did demand vacant possession from the Defendants immediately after the public auction, the sum of Kshs.42,000/- aforesaid shall be applicable from the date of registration of the transfer in favour of the Plaintiff, that is 27th September, 2010 to date.

7. Accordingly, I enter Judgment in favour of the Plaintiff against the Defendants, jointly and severally, as follows:-

(i) The Defendants and their families, agents, servants or licensees do vacate all that property known as Title No. Nairobi/Block 76/22 by the 10th day of December, 2012. Notice of this order be given forthwith.

(ii) Mesne profits for Kshs.42,000/- per month from 27th September, 2010 until the date of this Judgment, equivalent to Kshs.1,050,000/-. Interest on the same at court rate from the date of judgment until payment in full

(iii) Costs of the suit.

Decreed accordingly.

DATED and DELIVERED at Nairobi this 9th day of November, 2012.

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A. MABEYA
JUDGE