



No. 2794

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CIVIL CASE NO. 116 OF 2006

ERASTUS NYAIKO NKORORO.....PLAINTIFF

-VERSUS-

WAMBURA NKORORO & 4 OTHERS.....DEFENDANT

JUDGMENT

The plaintiff filed this suit against the defendants who apparently are his brothers and sister respectively praying for:

“a... Eviction of the defendants from land parcel Nyaribari/Bomerani/Z89

b. Costs.

c. Interest.

d. Any other relief...”.

From the undisputed facts of the case, the plaintiff is the registered owner of the aforesaid parcel of land, hereinafter ***“the suit premises”*** having purchased it from **Zablon Rioba Nyaikongoro**. Pursuant to the

sale agreement dated 8th February, 2006, the suit premises were, subsequently transferred and registered in the name of the plaintiff. However, the defendants have continued to reside on the suit premises despite the plaintiff's protestation and demand that they vacate.

The defendants in their defence do not deny occupying the suit premises. They claim however that they are entitled to occupy the same since they contributed towards its purchase. By way of counterclaim they demanded that the plaintiff be compelled to subdivide the suit premises into seven (7) equal portions measuring 3.7 ha each so that they and the plaintiff each get their respective portions out of the suit premises.

When the suit came up for plenary hearing, only the plaintiff testified. It was his evidence that he entered into a sale agreement on 8th February, 2006 with **Zablon Rioba Nyaikongoro** over the suit premises at a consideration of Kshs.150,000/=. Subsequently the vendor transferred the suit premises to him. He stays on the suit premises with the defendants who are his brothers and sisters. When he bought the suit premises, the defendants were in occupation. He denied that the defendants contributed towards the acquisition of the suit premises. He maintained that he bought the suit premises solely. He therefore prayed for their eviction.

During the hearing, none of the defendants appeared and testified. Indeed **Mr. Soire**, their learned counsel for the defendants closed their case without calling any evidence to back up their defence and counterclaim. The plaintiff's evidence therefore remains unrebutted and or unchallenged. Their defence to the effect that they had shares in the suit premises was not proved by evidence neither did they proof that they contributed money towards the purchase of the suit premises. The counterclaim was also not proved as there was no evidence to support it.

The law is clear in so far as the rights of the plaintiff as the registered proprietor of the suit premises is concerned. See sections 27 and 28 thereof respectively of the **Registered Land Act**. None of the defendants have challenged the registration of the plaintiff as the proprietor of the suit premises. In the absence of such challenge, the defendants have no business occupying the suit premises even if they are plaintiff's brothers and sister. In the absence of any challenge, the plaintiff's claim should be allowed with costs.

Accordingly, I now enter final judgment in terms of the plaint dated 30th August, 2006. The counterclaim is dismissed with costs to the plaintiff. The defendants have up to sixty (60) days from the date of this judgment to voluntarily vacate the suit premises failing which they will be forcefully evicted.

Judgment **dated, signed** and **delivered** at Kisii this 4th day of May, 2011.

ASIKE-MAKHANDIA

JUDGE