



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 157 OF 2008

LAWRENCE NGUTHIRU.....PLAINTIFF

VERSUS

RICARDA WANJIKU NGUTHIRU.....DEFENDANT

JUDGMENT

The subject matter of this judgment is the amended plaint dated 24th July 2006. In the aforesaid Plaint, **Lawrence Nguthiru**, the Plaintiff herein, sued **Ricarda Wanjiku Nguthiru**, the Defendant herein, praying for judgment in the following terms:

- (a) (i) An order for eviction from the Plaintiff's Share Certificate Number 474 in MATHARI VILLAGERS SELF HELP PROJECT comprising of 0.8 ACRES of one share Number 147.***
- (b) Costs of this suit.***
- (c) Interest on (b) above at Court rates.***
- (d) Any other or better relief that this court may deem fit to grant.***

The Defendant filed a defence to deny the Plaintiff's claim. It is apparent that the suit was originally filed at the Chief Magistrate's Court as **Nyeri C.M.C.C. No. 235 of 2006**. The same was later withdrawn from the aforesaid court and transferred to this Court vide **Nyeri H.C. Misc. App. No. 33 of 2007**.

The Plaintiff's case is supported by the evidence of two witnesses. Lawrence Nguthiru (P.W.1) told this Court that he bought the parcel of land known as share certificate No. 474 in Mathari villagers Self Help project comprising of 0.8 an acre of one share number 147, from Morris Muchemi (P.W.2). He produced as an exhibit in evidence the sale agreement which shows that the Plaintiff paid Ksh.35,000 to P.W.2 as the consideration for the aforesaid Plot. The sale agreement was executed on 24th May 1989 before Harmesh Kumar Mahan representing the firm of Bali-Sharma & Bali-Sharma Advocates. Morris Muchemi (P.W.2) confirmed having sold the aforesaid Plot to the Plaintiff. The Plaintiff further told this court that he was forced to sue P.W. 2 when he failed to transfer to him the said Plot. He produced certified copies of the proceedings and judgment in respect of Nyeri, S.P.M.C.C. No. 370 of 1993 as exhibits in evidence. The aforesaid proceedings and judgment show that the Plaintiff herein was declared as the lawful owner of the Plot in dispute. This piece of evidence was also confirmed by P.W.2. the Plaintiff stated that he put the Defendant, who is his mother, in occupation of the suit land to take care of the same. He now wants her to be evicted because she has refused to vacate the land thus preventing him from developing the land. P.W. 2 denied ever selling the land to the Defendant.

The Defendant testified without summoning independent witnesses to support her case. Ricardo

Wanjiku Nguthiru (D.W.1) claimed that she jointly bought the Plot in dispute with the Plaintiff. D.W.1 claimed she paid Morris Muchemi (P.W.2) a sum of Ksh.20000/= while the Plaintiff paid only Ksh.15,000/=. D.W.1 admitted that she did not sign any agreement with the vendor i.e. Morris Muchemi (P.W.2). In her evidence in chief, .D.W.1 claimed she has no other land nor home. On being cross-examined, D.W. 1 admitted that she owns Plot No. 547 thus corroborating the evidence of P.W.1.

At the close of evidence, parties were permitted to file written submissions. It is only the Plaintiff's submissions which have been received so far. I have considered the evidence tendered by both sides and the Plaintiff's submissions. It is apparent from the evidence tendered that the Plaintiff has established that he is the lawful owner of the parcel of land known as share certificate No. 474 in Mathari Villagers Self Help Project. The documentary evidence in form of a sale agreement, court proceedings and judgment clearly show that the Plaintiff is the sole owner of the aforesaid Plot. The Defendant has failed to tender any cogent evidence to establish her assertion that she jointly bought the suit property with the plaintiff. There is evidence that the Defendant owns the parcel of land known as Plot No. 547 though she had denied earlier while testifying in chief. That conduct of changing positions in her evidence has painted the defendant in bad light as a person whose evidence cannot be trusted nor relied upon. I think the issues which this court must determine are twofold: First, is whether or not the Plaintiff is the sole owner of the Plot in dispute.

Secondly, whether or not the Plaintiff is entitled to the orders sought? I have already concluded the first issue while analyzing the evidence. On the second issue, it is obvious that being the lawful proprietor of the Plot in dispute, the Plaintiff is entitled to evict the Defendant from the land. I grant him the order. The Plaintiff also prayed for costs. I am aware that the Plaintiff is a son of the Defendant. I think in the circumstances a fair order is to direct that each one of them should bear his or her own costs.

In the final analysis, judgment is given as prayed in prayer (a) (i). The Defendant is given 30 days to vacate the suit Plot in default, the Plaintiff will be at liberty to forcefully evict the Defendant at her own expense.

Dated and delivered at Nyeri this 3rd day of June 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Kimunya holding brief for Kariuki for Plaintiff and the Defendant in person.