



.REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

COMMERCIAL & TAX DIVISION – MILIMANI

CIVIL NO. 146 OF 2010

LYDIA WANJUE MWANGI..... PLAINTIFF

VERSUS

RICHARD NDUATI KARIUKI.....DEFENDANT

JUDGMENT

By a plaint dated 10th March, 2010, and filed in court on 12th March, 2010, the plaintiff prays for judgment against the defendant for –

- (1) Delivery up and vacant possession of the suit premises namely I.R.No. 74549/1 and/or LR No. 4953/2105, Thika.**
- (2) An order of eviction of the defendant from the aforesaid premises.**
- (3) A permanent injunction restraining the defendant, his servants and agents, whosoever and howsoever, from trespassing on the plaintiff's aforesaid premises or in any other way interfering with the plaintiff's ownership and possession of the said premises.**
- (4) Costs of this suit and interest thereon at court rates.**
- (5) Any further or other relief as this court may deem just and fit to grant.**

Although the defendant was duly served with summons to enter appearance on 24th April, 2010, which summons were annexed to the plaint herein, he did not enter such appearance either within 15 days as required or at all. The matter was accordingly listed for formal proof.

The plaintiff's case is that she bought the suit property from the defendant in 2008 for a consideration of Kshs 2, 500,000/-. However, the defendant failed to grant the plaintiff vacant possession of the said property. In her sworn evidence in court, she produced a copy of the sale agreement dated 23rd April, 2004. It was entered into between herself and the defendant in respect of LR No. 4953/2105, Thika. The purchase price was Kshs 2,500,000/-, receipt of which the vendor duly acknowledged. This price covered not only the plot itself, but also all the building(s) and improvements thereon.

After paying all the dues, the property was transferred to the plaintiff and she was given the title. She produced the original thereof as an exhibit. She therefore prayed for an eviction order and an injunction to restrain the defendant from interfering with the suit property. She also prayed for costs.

After considering this evidence and Mr Kimeria's submissions on behalf of the plaintiff, I find that there was an agreement between the plaintiff, the defendant and the Kenya National Housing Corporation whereby the defendant's entire interest in the suit property was duly assigned to the plaintiff. According to the agreement between the parties, the plaintiff was due to take vacant possession of the property on 1st May, 2008. However, that did not materialize as the defendant was and still is in possession of the suit property.

Since the plaintiff has established that she fulfilled all the conditions in the agreement for the acquisition of the suit property and holds the certificate of title thereto, I find that she is entitled to judgment against the defendant as prayed. I accordingly enter judgment for the plaintiff against the defendant for –

- (a) Delivery and vacant possession of the suit premises known as LR No. 4953/2105, Thika, within 21 days from the date hereof.**
- (b) In default of delivery of vacant possession of the suit premises within the said period, an eviction order to issue.**
- (c) A permanent injunction be and is hereby issued restraining the defendant, his servants and/or agents whosoever and howsoever, from trespassing on to the plaintiff's premises known as LR No. 4953/2105, Thika, or in any other way interfering with the plaintiff's ownership and possession of the said premises.**
- (d) Costs of this suit and interest thereon at court rates.**

DATED and DELIVERED at NAIROBI this 28th day of July, 2011.

L. NJAGI
JUDGE