



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO. 77 OF 2010**

**JOHNSON KIREGA BARI.....PLAINTIFF**

**VERSUS**

**MAINA WAKORI ALIAS MAINA NDEGWA WAKORI.....DEFENDANT**

**JUDGMENT**

This suit was filed by Johnson Kirega Bari against Maina Wakori alias Maina Ndegwa Wakori, seeking the following orders:-

- (a) Vacant possession of Title No. Bahati/Bahati Block 1/2439;**
- (b) A permanent injunction restraining the defendant, his servants and agents from invading, entering and or interfering in any way with the plaintiff's peaceful and quiet enjoyment, occupation and ownership of Title Bahati/Bahati Block 1/2439 as a whole;**
- (c) Costs of the suit.**

The plaintiff pleaded in his plaint that he is the registered proprietor of the suit land, and without any colour of right and without the plaintiff's consent, the defendant has trespassed onto the suit land, denying the plaintiff peaceful and quiet settlement and user of the suit land.

Though the defendant was served with the plaint and summons, he did not enter appearance or file a defence. Interlocutory judgment was entered against the defendant on 29/4/2010 and the case came up for formal proof on 12/4/2011 when the plaintiff testified that he entered into a sale agreement over the suit land in 2001. He paid the vendor Ndambi Rutunu Maigwa, by way of small instalments for his upkeep. They agreed verbally about payment in instalments but in 2003, the vendor's daughters, all went to the Lands office with the plaintiff where they swore an affidavit to the effect that they did not object to the sale and that the land could be transferred to the plaintiff when the Land Control Board started sitting. The daughters were Gladys Njeri Kariuki, Esther Wangui Ndambi and Beatrice Rutino Maigwa. The seller also swore an affidavit on 8/8/2003 indicating the sale price to be Kshs.200,000/-. By then the plaintiff had paid Kshs.77,795/- and the balance was Kshs.123,000/-. He testified that he continued with payments till 2008 when the defendant who is one of the grandsons of the vendor started alleging that there was no sale agreement between the vendor and the plaintiff. The plaintiff sought a refund of his money but no refund was made. By then he had paid Kshs.146,065/-. He stopped payments but in February 2009, he was asked by one of the vendor's daughters to go and see the vendor who asked the plaintiff to pay the balance and the plaintiff did pay Kshs.54,000/- on 15/4/2010. Two months later, he learnt of the seller's death and he went for the burial when the defendant alleged that no payment had

been made and barred the plaintiff from using the land and that is when the Plaintiff came to court seeking eviction. The land was transferred to the plaintiff's name on 31/5/2005 and he was issued with a title PEX.1. On 25/12/2010, the plaintiff did a search at the Lands office and found that he is still the registered owner. The search was also produced in evidence as PEX. 2a & b.

The title deed dated 31/5/2005 is in the name of the plaintiff, Johnson Kirega Bari. A search conducted on 28/12/2010 also confirms that the plaintiff is still the registered owner of the land. Although the sale agreement was not produced in evidence, there is no evidence to rebut the plaintiff's testimony on how the land was sold and how he paid for the suit land. **Section 27(a) of the Registered Land Act Cap 300 Laws of Kenya** provides:-

**“The registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”**

The plaintiff being the registered proprietor, all rights vest in him. **Section 28** then provides that:-

**“The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of Court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject:-**

**(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and**

**(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared but Section 30 not to require noting on the register.”**

The above sections mean that the rights of a registered proprietor of land under the Registered Land Act are absolute and indefeasible and are only subject to the rights and encumbrances entered on the register or overriding interests which are set out in Section 30 of the Act. The plaintiff's evidence has not been challenged in any way nor is there evidence of any registered or overriding interest. I am satisfied on a balance of probability that the plaintiff has proved that he is the registered owner of the suit land and the court grants the orders as prayed in the plaint. Costs of the suit to the plaintiff.

**DATED and DELIVERED this 28<sup>th</sup> day of October, 2011.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Mr. Bosire holding brief for Mr. Nyaribo for the plaintiff.

No appearance for the defendant.

Kennedy – Court Clerk.