



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO. 81 OF 2009

EVALINAH WAGIKUYU MUNYORO.....PLAINTIFF

Versus

MIRIAM WACUKA MWANGIDEFENDANT

JUDGMENT

Evalinah Wagikuyu Munyoro, the plaintiff herein sued Miriam Wacuka Mwangi, the Defendant vide the plaint dated 18th May 2009. In aforesaid plaint the plaintiff asked for judgment in the following terms:

- a. An order of eviction against the Defendant her family members, heirs, servants, employees or agents from land Parcel No. Loc.18/Gachocho/1189 with all crops and structures thereon.***
- b. An order of permanent injunction against the Defendant, her family members, heirs, servants, employees or agents barring entry into land Parcel No. Loc.18/Gachocho/1189.***
- c. The costs of the suit.***

The plaint plus the summons were served upon the Defendant who in turn filed an appearance but failed to file a defence. The case proceeded for hearing as a formal proof.

When the suit came up for hearing, the plaintiff testified alone without summoning independent witnesses to support her case. Evalinah Wagikuyu Munyoro (P.W1) told this court that Miriam Wacuka Mwangi who is her step-daughter has unlawfully refused to vacate parcel no. Loc.18/Gachocho/1189. P.W.1 produced in evidence as an exhibit Land Certificate of the aforesaid parcel to show that she was the registered proprietor. That title was issued to the plaintiff on 6th December 1978. P.W.1 said the land was transferred to her by husband. The defendant is said to have been placed into occupation of the suit land by her late husband John Mwangi Munyoro in 1990. The plaintiff told this court that John Mwangi Munyoro had sued her vide Nairobi H.C.C.C. no. 541 of 1989. P.W.1 produced a copy of decree which shows that the suit land was given to the plaintiff. The plaintiff further alleged that when the Defendant's husband passed on, the Defendant attempted to bury his remains on the suit premises but she managed to obtain an order on injunction to restrain the defendant from doing so vide Kigumo S.R.M.C.C.C. no. 142 of 2008. She produced as an exhibit in evidence a copy of the court order.

I have carefully considered both the oral and the documentary evidence tendered by the plaintiff. The main issues which have arisen in this case is whether or not the plaintiff has established ownership of the suit premises. The other question is whether there is cogent evidence to show that the

defendant is unlawfully in occupation of the suit land. After a critical consideration of the evidence, it is apparent that the plaintiff has on a balance of probabilities shown that she is the registered proprietor of the sued land. She must therefore enjoy the rights conferred to registered proprietors under the Registered Land Act. The defendant's claim over the suit land is unknown to this court. Her presence on the suit land is not supported by evidence nor law.

In the end I am convinced that plaintiff has proved her case to the required standards in civil cases. I enter judgment in her favour as prayed in the plaint. The Defendant should vacate parcel no. Loc.18/Gachocho/1189 within 30 days from the date of this judgment. In default the plaintiff to forcefully evict the defendant at the defendant's cost.

The plaintiff to have the costs of the suit.

Dated and delivered this 21st day of October 2011.

J.K. SERGON
JUDGE

In open court in the presence of Mr. Kingori for the plaintiff N/A for the Defendant.

J.K. SERGON
JUDGE