



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL CASE NO. 196 OF 1992

EDWARD WARUTERE MURUNGARU.....PLAINTIFF

VERSUS

EZEKIEL KINYUA WARUNGU.....1ST DEFENDANT

GATHUNGU KARUE.....2ND DEFENDANT

KAMATONGU CATHOLIC CHURCH.....3RD DEFENDANT

MAINA IBUTI.....4TH DEFENDANT

CHARLES GITONGA MURIITHI.....5TH DEFENDANT

JANE WAMBUI MAINA.....6TH DEFENDANT

JUDGMENT

Edward Warutere Murungaru, the Plaintiff herein, filed the Complaint dated 30th June 1992 in which he sued **Ezekiel Kinyua Warungu and five others**, the Defendants herein, whereof he sought for judgment in the following terms:

- (a) The defendants be evicted from parcels of land MWEIGA/BLOCK 4/MWIRERI/76 to 82.**
- (b) The defendant to surrender all the title deeds issue to them and the Land Registrar Nyeri do issue title deeds in respect of the aforementioned parcels to the Plaintiff.**
- (c) The plaintiff be put into occupation after the defendants have removed all their moveable and immovable properties therein and given vacant possession.**
- (d) The defendants do pay cost of this suit and interest at court rates.**

The Defendants denied the Plaintiff's claim by filing a joint statement of defence. When the suit came up for hearing, the Plaintiff and the Defendants each presented the evidence of one witness.

It is the evidence of the Plaintiff that all the six parcels of land now in the names of the Defendants originally belonged to him having been allocated by Mwireri Farmers Co. Ltd., a land buying company. He claimed he was put into occupation of those parcels forming one parcel measuring 12 acres. He said that the parcels were his entitlement for shareholding in the land buying company. He alleged that the land buying company later subdivided the land into six parcels and fraudulently sold the

same to the Defendants who subsequently registered themselves as proprietors thereof. The Plaintiff said he was in occupation of the land for a period of 10 years before he was evicted. He said he was prompted to file **Nyeri H.C.C.C. No. 133 of 1987** to assert his rights. He stated that he was issued with a decree on 2nd April 1991 which was to the effect that the land was his and that the trespassers therein should be evicted. He claimed the trespassers successfully resisted his move claiming they had titles thus prompting him to file this suit. The Defendants on the other hand claimed they were allocated the land in dispute by the land buying company and that they immediately took possession in 1979 and became the registered proprietors in 1989. At the close of the evidence, learned counsels were invited to file written submissions. I have considered those submissions *vis-à-vis* the evidence.

I think the main question which has been posed to this court to decide is who is the lawful proprietor of the suit premises between the Plaintiff and the Defendants? It is clear from the evidence tendered that the Defendants were members of Mwireri Estate Ltd., a land buying company where they paid money to be eligible for allocation of land. There is evidence that upon submitting payments the Defendants balloted and were each shown their respective portions where they quickly moved into occupation. The 1st Defendant who testified on behalf of all the Defendants told this Court that after he had occupied his piece of land in 1979 he was given a letter by the Land buying company permitting him to develop his portion i.e. plot No. 338 which later changed to Plot No. 78. The Defendants through the evidence of the 1st Defendant that they were all issued with their respective title deeds between 1989 and 1992. It is admitted by the Plaintiff that the Defendants managed to successfully challenge his decree of eviction on account that they were not parties to **Nyeri H.C.C.C. 133 of 1987**. Unfortunately, the Plaintiff has failed to produce his receipts of payments made to the land buying company, ballot papers or a letter authorizing him to develop the land. It would appear the Plaintiff was messed up by the officials of the land buying company. I think the Plaintiff should allow the problems he has or had with Mwireri Estate Ltd. to be visited upon the Defendants. In the end, I am convinced that the Defendants acquired their parcels of land directly from the aforesaid company. There is no evidence showing that any of the Defendants committed acts of fraud in the acquisition of the suit premises. Strictly speaking, the Plaintiff does not have a cause of action against the Defendants. None of them was an official nor director of the land buying company. I do not know why the Plaintiff did not deem it fit to enjoin Mwireri Estate Ltd as a party to this suit.

In the final analysis I see no merit in the suit. The same is dismissed with costs to the Defendants.

Dated and delivered at Nyeri this 18th day of November 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Njuguna for the Defendants and Kingori for the Plaintiff.