



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 29 of 2008

RUTH WANJIRU IBRAHIM

EUNICE WANJIRA IBRAHIM.....PLAINTIFFS.

Versus

EVERLYN WAHITO WACHIRADEFENDANT

JUDGMENT

Interlocutory judgment in default of defence was entered against the defendant on 12th May 2008. The aforesaid judgment was set aside on 13/11/2008 on condition that the defendant pays thrown away costs in the sum of Kshs. 6000/- to the plaintiff. The exparte judgment was set aside on the basis of the summons dated 6th August 2008. This court recorded a default clause which meant that if the defendant failed to meet the conditions, the summons dated 6/8/2008 shall stand automatically stand dismissed and that the exparte judgment would be restored. When this suit came up for hearing, Mr. Wahome, learned advocate for the plaintiff informed this court that the defendant had not complied with the condition requiring her to pay the plaintiffs Kshs. 6000/- as thrown away costs. This court restored the exparte judgment and directed the plaintiffs to proceed for hearing exparte. It means the defence and the counter-claim stood struck out and expunged from record.

When the suit came up for hearing, Eunice Wanjira Ibrahim, testified in support of the plaintiff's case. In the plaint dated 18th march 2008, Ruth Wanjiru Ibrahim and Eunice Wanjira Ibrahim the plaintiffs herein pray for judgment against Everlyn Wahito Wachira, the defendant herein in the following terms:

- i An order of eviction of the defendant and her family from L.R. No. Konyu/Gakuyu/1060**
- ii Damages for trespass.**
- iii Costs of the suit.**
- iv Interest on (ii) and (iii) above at court rates.**

Eunice Wanjira Ibrahim (P.W.1) told this court that she and Ruth Wanjiru Ibrahim were the registered proprietors of the parcel of land known as L.R.No. Konyu/Gakuyu/1060. She produced the title deed as an exhibit in evidence. P.W.1 said she knows that the defendant is the registered proprietor of the adjacent parcel of land. She said the defendant moved to occupy their parcel of land and has since then refused to vacate despite having been given demand notices. P.W.1 produced a copy of the demand notice dated 25/2/2008 served upon the defendant by the plaintiff's advocate. P.W.1 said they were prompted to file this action when the defendant failed to meet their demand. P.W.1 claimed they have not utilized the land since date of purchase.

I have considered the oral and documentary evidence presented by the plaintiffs. It is clear that the plaintiffs are the joint registered proprietors of the parcel of land known as Konyu/Gakuyu/1060. Title

was issued to the plaintiffs on 2nd August 2007 under the provisions of the Registered Land Act. I am convinced that the plaintiffs have shown that they have registered proprietary interest over the suit property. I am also convinced that in the absence of any contrary evidence, that the defendant is a trespasser on the plaintiffs' land. It is therefore right at this stage to state that the plaintiffs have proved their case on a balance of probabilities. The plaintiffs' rights as registered proprietors are protected under section 27, 28 and 30 of the Registered Land Act (Cap. 300 L.O.K.) I hereby enter judgment in favour of the plaintiffs in the following terms.

- i The defendant plus her family, employees and or agents are ordered to vacate L.R. No. Konyu/Gakuyu/1060 within 30 days.
- ii The Plaintiffs had asked to be paid for damages for trespass. No specific figure was stated. I will give the plaintiffs a global figure of Kshs. 20,000/- on this head.
- iii The plaintiffs shall have costs of the suit.
- iv. Interest of (ii) and (iii) above at court rates.

Dated and delivered this 13th day of January 2010.

J.K. SERGON
JUDGE

In the presence of Ombongi h/b Wahome for plaintiff.
N/A Kamwenji for defendant

J.K. SERGON
JUDGE