



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Civil Case 82 of 2007

JAMES NGURU KATHURI.....PLAINTIFF

VERSUS

DUNCAN RUNJI KATHURI.....DEFENDANT

J U D G M E N T

The plaintiff herein James Nguru is the defendant's brother. The plaintiff is the absolute registered owner of land parcel No. **EMBU/KITHUNTHIRU/268** measuring approximately 1.4 Ha as evidenced by the Title Deed dated 29/9/2006, P Exh 1, the extract of the register of Title (P Exh2) and the certificate of official search dated 24/3/2009.

According to the plaintiff, the defendant went to the said land without his permission and started living there. Efforts by the plaintiff to have him leave failed to bear any fruits hence the institution of this suit on 27/6/2007 vide the plaint dated 20/6/2007. He is asking the court for the following orders:-

- (a) That the Defendant do vacate from the land parcel **No.EMBU/KITHUNTHIRI/268**.
- (b) Alternatively, be evicted from the said land parcel.
- (c) General damages for the destruction occasioned by the trespass and
- (d) Costs of the suit and interest thereon at court rates.

The defendant was duly served with the plaint and summons to enter an appearance on 2/7/2007 but he did not enter an appearance and nor did he file any defence. The matter therefore proceeded by way of formal proof with the plaintiff producing the documents to prove ownership of the said parcel of land. There is no doubt that the plaintiff is the registered owner of the said parcel as reflected in the Title Deed, extract of Title and the certificate of search. The said Title Deed does not show any encumbrances and the plaintiff is the sole proprietor. The defendant failed to file any defence and it is not clear therefore whether he has any claim on the plaintiff's property. In the absence of any other document to rebut the evidence of ownership relied on by the plaintiff, the court finds the plaintiff's case proved on a balance of probability. I find that the land in question belongs to him and that the defendant has no colour of right or claim over the same. He should not therefore remain on the plaintiff's plot against the plaintiff's wishes.

Accordingly, I enter Judgment in favour of the plaintiff and order that the Defendant vacates the plaintiff's said plot within 3 months of the delivery of this Judgment failing which the plaintiff should be at liberty to evict him without further recourse to this court.

I nonetheless find that the general damages claimed were not proved and I will not therefore award any as prayed in prayer (c) of the plaint. The plaintiff is nonetheless awarded the costs of this suit plus costs and interest thereon at court rates.

W. KARANJA
JUDGE

Signed, delivered and dated at Embu this 17th day of February, 2010

In presence of:- Plaintiff – present
defendant - absent