



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISII**

**Civil Suit 75 of 2006**

**OMBORI MIGIRO ..... PLAINTIFF**

**VERSUS**

**DENIS BASWETI ..... DEFENDANT**

**JUDGMENT**

The plaintiff alleged that he is the registered proprietor of a parcel of land known as **Nyamira/North Mugirango/Bokeira 1/32**, hereinafter referred to as “**the suit property**”. In 1999 the defendant unlawfully moved into a portion of the suit property and put up temporary houses thereon. He prayed for an order of eviction and demolition of the said temporary structures plus costs of the suit.

The defendant denied that he had trespassed onto the suit property and averred that he lawfully occupied a parcel of land known as **North Mugirango Bokeira/15B**, a market plot within Nyamusi market. He added that he leased the said plot from the county council of Nyamira, the allocating authority to which he pays annual rent.

The plaintiff produced a title deed for the suit property as an exhibit. The same was issued to him on 5<sup>th</sup> September, 2001. It measures 0.7 hectares. He stated that sometimes in 1999 the defendant unlawfully occupied a portion of that land and put up a mud walled house roofed with corrugated iron sheets in which he was operating a shop and a hotel. He added that the county council of Nyamira had never taken any portion of the suit property and given it to the defendant.

**Dickson Okore, PW2**, the District land Registrar, Nyamira, testified that the suit property is registered in the name of the plaintiff since 16<sup>th</sup> July, 1976. It had never been acquired by the government for any purpose. The witness produced the Green Card in respect of the parcel of land and the registry index map which shows the location of the plot. The registrar denied existence of any parcel of land known as **North Mugirango/Bokeira 1/15B**.

The defendant stated that the parcel of land which he is occupying was allocated to him by the county council of Nyamira in 1999. A plot card was given to him vide the council’s **minute No.4/99 D (19)**. He

produced the same as an exhibit. He thus claimed that he was lawfully in occupation of the plot and had developed the same.

In cross examination, the defendant said that apart from the plot card he had no other document to support his ownership of the plot.

**Truphena Nyanchoka Nyakeyo, DW2**, is the deputy clerk, county council of Nyamira. She said that according to her council the defendant was the owner of plot No. 15B at Nyamusi market. The original title for the entire market was 405 but the same was subdivided to produce 44 plots. She did not know when that was done and neither did she know who the original owner of the plot was. The witness produced a list of plot owners, Nyamusi market. She further stated that the council had not given a lease certificate to the defendant. She further stated that she was not aware that the alleged plot No.15B was created from Nyamira/North Mugirango/Bokeira/32.

The parties filed their respective submissions which I have duly considered.

There can be no dispute that the plaintiff is registered as the sole absolute proprietor of the suit property pursuant to the provisions of **sections 27 and 28** of the **Registered land Act**. He was so registered on 16<sup>th</sup> July, 1976 though the title deed was issued to him on 5<sup>th</sup> September, 2001.

**Section 27 (a)** provides as hereunder:

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

Under **section 28**, the rights of a proprietor cannot be defeated except as provided in the Act.

On the other hand, the defendant's claim of ownership of part of the suit property is based on the plot card that was issued to him by the county council of Nyamira in 1999. However, there is no evidence that the county council ever acquired any portion of the suit property from the plaintiff. A county council cannot purport to alienate private property and allocate it or a portion thereof to a third party. A plot card cannot override a title deed. If the county council of Nyamira did not lawfully acquire the plaintiff's land, it cannot pass a good title to the defendant.

**PW2**, the District Land Registrar, Nyamira, told the court that there exists no parcel of land known as **North Mugirango/Bokeira/15B**. The deputy clerk of the county council of Nyamira alleged that the whole of Nyamusi market originally lay on plot No. 405 which was subdivided into 44 plots and the defendant was allotted one of them. However, the witness did not show any nexus between the alleged plot No. 405 and the suit property, plot No. 32.

The registry index map that was produced by PW2 clearly demonstrated the actual location of the suit property and there was no dispute that it was the plaintiff's.

I find that the plaintiff has proved his claim on a balance of probability. The defendant has no right to

continue occupying the plaintiff's land any more. I order him to vacate the suit property within the next fourteen (14) days from the date hereof failing which he shall be evicted and the structures thereon demolished. The defendant shall bear the costs of this suit.

**DATED, SIGNED AND DELIVERED AT KISII THIS 22<sup>ND</sup> DAY OF JUNE, 2010.**

**D. MUSINGA  
JUDGE.  
22/6/2010**

Before D. Musinga, J.

Mobisa - cc

N/A for the Plaintiff

Mr. Sagwe for the Defendant (Mr. Nyambati HB)

**COURT:** Ruling delivered in open court.

**D. MUSINGA  
JUDGE.**