



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII.
CIVIL SUIT NO. 56 OF 2008

EUNICE NYAKIMBA WAWERU.....PLAINTIFF

VERSUS

PETER MIYEINDA..... 1ST DEFENDANT/RESPONDENT
ANN NYABONYI NYANGW'ARA..... 2ND DEFENDANT/RESPONDENT
HON. ATTORNEY GENERAL.....3RD DEFENDANT/RESPONDENT
ZEPHANIAN YANG'WARA..... 4TH DEFENDANT/RESPONDENT

RULING

The first defendant filed on application dated 15th December, 2008 seeking, *inter alia*, an order that the plaintiff, second and fourth defendants be compelled to give him vacant possession of the property known as **West Kitutu/Bomatasa/2549**, hereinafter referred to as the “**suit property**”. Alternatively, he prayed that they be ordered to pay rent to him for the period they have remained in illegal possession of the same. He claimed to have purchased the same from the second and fourth defendants. The suit property was eventually transferred to him.

The second and fourth defendants contested that application though the fourth defendant later got into an agreement with the first defendant for refund of his money.

Before the application was fully heard, the first defendant sold and transferred the suit property to Eucabeth Mwangi Nyango Nyangena and Joseph Nyangena Ombego who became the joint registered proprietors of the same on 3rd February, 2010. The plaintiff and the fourth defendants termed that transfer fraudulent since the court had ordered that the *status quo* be maintained. They urged the court to dismiss the first defendant's application and order that the aforesaid purchasers be joined as defendants in this suit.

The first defendant, having sold and transferred his interest in the suit property, has no proprietary interest in the same and cannot therefore be granted the orders sought in his application under reference. On the other hand, the court cannot proceed to hear this case and make orders that may be adverse to the interests of the current registered proprietors of the same before granting them an opportunity to be heard. The court will also require to investigate how the transaction was carried out. Consequently I make the following orders:-

- (a) **The first defendant's application dated 15th December, 2008 is dismissed with costs.**
- (b) **Eucabeth Mwangi Ombego and Joseph Nyangena are ordered joined as defendants in this suit.**
- (c) **This case which was commenced by way of an originating summons shall be resolved by way of *viva voce* evidence.**
- (d) **The costs of this application shall be in the cause.**

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF JULY, 2010.

D. MUSINGA
JUDGE.

29/7/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Nyambati for Mr. Oguttu for the Plaintiff

Mr. Masinde for the 1st Defendant

Mr. Otieno for the 2nd Defendant

Mr. Nyambati HB for Mr. Anyona for the 4th Defendant

Court: Ruling delivered in open court on 29th July, 2010.

D. MUSINGA
JUDGE.