



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 74 of 2007

GERALD GICHUKI WANJOHI.....PLAINTIFF

VERSUS

**ELIZABETH WANJIRU MARINGA.....DEFENDANT/RESPONDENT
AND**

WAGIITA THEURI & CO. ADVOCATES.....APPLICANT

JUDGMENT

By the Plaint dated 18th September 2007, **GERALD GICHUKI WANJIHI**, the Plaintiff herein, sued **ELIZABETH WANJIRU MARINGA**, the defendant herein, whereupon he sought for judgment in the following terms:

- (i) *Declaration that he is registered absolute proprietor to LAND PARCEL NO. L.R. LAIKIPIA/DAIGA UMANDE BLOCK 4/770 (NYARIGINU) and defendant's entry therein is unlawful.*
- (ii) *An order of permanent injunction restraining defendant by himself, his agent, servant and/or employees from trespassing or in any way interfering with the plaintiff's user and occupation of land parcel L.R. LAIKIPIA/DAIGA UMANDE BLOCK 4/770 (NYARIGINU) and an eviction order.*
- (iii) *Costs of the suit and interest.*

The Defendant resisted the Plaintiff's claim by filing a defence on 4th October 2007.

When the suit came up for hearing, the Plaintiff testified alone without the input of the evidence of independent witnesses. The Defendant did not attend court nor did she present any witness to testify. The Defendant's advocate indicated to Court that the Defendant had no evidence to offer. Consequently this court closed the Defendant's case.

GERALD GICHUKI WANJOHI (P.W. 1) presented documents in form of a title deed and a certificate of official search to prove that he is the registered proprietor of **L.R. NO. LAIKIPIA/DAIGA UMANDE BLOCK 4 (NYARIGINU)/770**. The aforesaid documents indicate that P.W. 1 became the registered owner of the aforesaid land on 2nd September 1999. P.W. 1 said that in 2006, he visited his land and found a wooden structure had been built on his land. The house was occupied by one Kahuthu who had told P.W. 1 that he had been put into occupation by the Defendant. The witness produced demand notices he had served upon the Defendant to vacate the land. P.W. 1 further produced a reply from the Defendant through the firm of Wagiita

Theuri & company Advocates in which the Defendant claimed she had bought the land on 26th July 1990 from one Simon Kahuthu Ngari. On the basis of the above evidence the Plaintiff urged this Court to give him judgment as prayed in the Plaint.

The agreed issues were not filed in this case. However, from the pleadings and evidence tendered, I think the following issues arose for my determination:-

- (i) Whether or not the Plaintiff was the registered proprietor of the parcel of land in dispute?
- (ii) Whether or not the Defendant is a trespasser?
- (iii) Whether or not the Plaintiff is entitled to the orders sought?

I will start with the first issue. There is no doubt that the Plaintiff has produced documentary evidence in form of a title deed and a certificate of search which shows that the Plaintiff is the registered proprietor of **L.R. NO. LAIKIPIA/DAIGA UMANDE BLOCK 4/770 (NYARIGINU)**. Under *Section 33 (2)* of the Registered Land Act, the title shall be taken as *prima facie* evidence of ownership. The certificate of search does not show any other entries to the showing the contrary. In the circumstances, the Plaintiff's rights are protected under *Sections 27 and 28* of the Registered Land Act. The second issue as to whether or not the Defendant is a trespasser! The answer appears to be obvious. The Defendant did not offer any evidence to show that she purchased the suit land. She has admitted through the letter of her advocate in response to the Plaintiff's demand notice that she actually entered into the suit land. She claimed in her defence that she is in occupation of the land as a purchaser. I am convinced that the Plaintiff has proved that the Defendant trespassed into his land. The Plaintiff has clearly shown that he is entitled to the orders sought in the Plaint. Consequently judgment is entered in favour of the Plaintiff and against the Defendant as prayed in the Plaint.

Dated and delivered at Nyeri this 9th day of July 2010.

J. K. SERGON
JUDGE

In open court Wachira holding brief Mwangi for Plaintiff. No appearance Wageita for Defendant.