

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CIVIL CASE NO. 90 OF 2008

ALBERT BARASA MUDENGE ::::::::::::::::::::::::::::::::::: PLAINTIFF
V E R S U S
JANE NJERI ::::::::::::::::::::::::::::::::::: DEFENDANT

J U D G M E N T

1. The Plaintiff, Albert Barasa Mudenge filed this suit on 2.12.2008 and in his Plaint dated 1.12.2008, he avers that he is the registered proprietor of land parcel no. Kakamega/Soy/1312 and that in the year 2005, he leased the whole of it to the Defendant, Jane Njeri. That the Defendant in breach of the sale agreement, which was to subsist for only one year, started constructing houses thereon and upon expiry of the lease, refused to vacate the land. An order of eviction is sought at paragraph 8 of the Plaint together with costs thereon.
2. In a Statement of Defence dated 4.2.2009, the Defendant denied that she had been granted a leasehold interest in the land parcel aforesaid and instead averred that she purchased the said parcel of land in the year 2000 at a consideration of KShs.150,000/= and moved to occupy it in the 2005. That the Plaintiff thereafter refused to transfer the land to her despite protests to the local office of the provincial administration. She prayed for dismissal of the suit with costs and an order that the Plaintiff do transfer the land in dispute to her.
3. When the suit was listed for hearing on 27.9.2010, the Defendant was absent although she was properly served with the hearing notice for that day.
4. The Plaintiff in his evidence produced the title for land parcel no. **Kakamega/Soy/312** and the same shows that he was granted title on 6.3.2007 and it was his further evidence that he had allowed the Plaintiff permission to use the land as a tenant and that she paid KShs.5,000/= as rent. That the Defendant then started putting up houses on the land contrary to the lease agreement and continued to do so even after the Plaintiff tried to intervene. He denied selling the land to her and wanted her to be evicted.
5. There is no reason to deny the Plaintiff his prayers. He has produced the title deed for the land. The Defendant's claim that she had purchased the land is not borne by any evidence before this court. The Plaintiff's title is indefeasible and he is entitled to possession thereof. Whether the Defendant entered the land as a tenant or not, there is no reason why she is presently on land that does not belong to her. He claims to have the land transferred to her has no basis at all.
6. In the event, and there being no credible defence to the suit herein, I have to accede to the Plaintiff's prayers and order that the Defendant be evicted from land parcel no. 1096 aforesaid with costs to the Plaintiff.
7. Orders accordingly.

Delivered, dated and signed at Kakamega this 10th day of November, 2010

ISAAC LENAOLA
J U D G E