



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Civil Case 22 of 2008**

**CORNELIUS WARUTERE.....PLAINTIFF**

**VERSUS**

**JUSTUS KIBUCHI GATURUHU.....DEFENDANT**

**JUDGMENT**

In the amended Plaint dated 8<sup>th</sup> April 2008, Cornelius Warutere Karianjahi, the Plaintiff herein, sought for judgment against Justus Kibuchi Gaturuhu, the Defendant herein, in the following terms:

- (a) An order of eviction from **L. R. NAROMORU/BLOCK 2 (MURIRU)/350**.
- (b) Costs of the suit and interest.
- (c) Any other relief.

The Defendant also filed a defence to deny the Plaintiff's claim. The Defendant filed a counter-claim against the Plaintiff in which he prayed to be declared to have acquired **L. R. NO. NAROMORU/BLOCK 2 (MURIRU)/350** by adverse possession. The Defendant further applied for the register relating to the aforesaid parcel of land to be rectified so that the name of the Plaintiff is deleted and substituted with his name.

When the suit came up for hearing, the Defendant failed to turn-up. The Plaintiff successfully applied for the Defendant's case to be closed and for the dismissal of the counter-claim. The Plaintiff testified without calling for any independent witnesses. Cornelius Warutere (P.W.1), explained in detail the steps he took to acquire parcel No. **NAROMORU/BLOCK 2 (MURIRU)/350**. P.W. 1 produced share certificate No. 3998 to prove that he was a shareholder in Weruini (Holdings) Ltd., a land buying Company. P.W. 1 further produced as an exhibit in evidence the ballot paper No. 1808 dated 21<sup>st</sup> March 1981 in which he was successfully allocated Plot No. C38. The aforesaid plot was later changed to Plot No. 350 now known as **NAROMORU/ BLOCK 2 (MURIRU)/350**. Upon being allocated the aforesaid Plot, P.W. 1 said he paid for the survey fees. He produced three receipts he was issued by the Weruini (Holdings) Ltd. The Plaintiff was finally issued with a title deed on 11<sup>th</sup> day of February 1988. P.W. 1 produced in evidence as an exhibit the title deed and an official search certificate.

At the end of the evidence Mr. Kiminda, learned advocate for the Plaintiff, made brief oral submissions. He urged this Court to find that the Plaintiff has established his case on a balance of probabilities. I have considered the evidence and the learned Counsel's submissions. I note that the

parties did not file the agreed issues. However, in my estimation, I think the following issues for the determination of this Court:

- (i) Whether or not the Plaintiff is the registered proprietor of **L. R. NO. NAROMORU/BLOCK 2 (MURIRU)/350**.
- (ii) Whether or not the Defendant is illegally in occupation of the aforesaid parcel of land.
- (iii) Whether or not the Plaintiff is entitled to the orders sought in the amended Plaintiff.

Let me start with the first issue. I have examined the documents presented by the Plaintiff to this Court in his evidence. It is obvious from the aforesaid documents that the Plaintiff bought shares in Weruini (Holdings) Ltd., a land buying company. The Plaintiff balloted and was allocated Plot No. C 38 which was later registered as **NAROMORU/BLOCK 2 (MURIRU)/350**. THE Plaintiff was later issued with a title deed upon paying the required fees to the relevant authority. In the end I am convinced that the Plaintiff was lawfully registered as the proprietor of **L. R. NO. NARMORU/BLOCK 2 (MURIRU)/350**. He is therefore entitled to the rights set out in Sections 27 and 28 of the Registered Land Act to the exclusion of others.

My conclusion in issue number 1 automatically affects the second issue. It is clear from the evidence of P.W. 1 that the Defendant is in occupation of the land in dispute. The Defendant failed to attend the hearing of this suit hence there is no evidence to show that he has any overriding interest over those of the Plaintiff. In the absence of such crucial evidence, I find that the Defendant is unlawfully in occupation of **L. R. NO. NAROMORU/BLOCK 2 (MURIRU)/350**.

Having come to the conclusion that the Defendant is unlawfully in occupation of the Plaintiff's land, I am convinced that the Plaintiff is entitled to the orders sought. In the end judgment is entered in favour of the Plaintiff and against the Defendant as prayed in amended Plaintiff dated 8<sup>th</sup> April 2008. The Defendant's counter-claim is dismissed for want of attendance with costs to the Plaintiff.

**Dated and delivered this 26<sup>th</sup> day of August 2009.**

**J. K. SERGON**

**JUDGE**