

JOHN M'ABACITI KANAMPIUPLAINTIFF

VERSUS

BAITHUMBI NGEERA.....DEFENDANT

JUDGEMENT

The plaintiff's claim is that he is the registered owner of parcel No. Igoji/Kiangua/1744. He pleaded that the defendant had trespassed on his land and sought prayers for his eviction, general damages for trespass and mesne profit. The defendant in his simple defence denied the plaintiff's claim and put the plaintiff to strict proof. In evidence the plaintiff produced certificate of title which showed that he was the registered owner of the suit property as at 26th April 2002. He said that he had purchased the property from Gebson Gitonga Kaugi. He produced the said agreement dated 22nd January 2002. On paying the full purchase price, the property was registered in his name. He however said that when the property was registered in his name, he found the defendant using the shamba. The defendant was cultivating and living on that land. From the date when he was registered as an owner, he had not benefited from the land. He prayed that the court will order the defendant to vacate the land since he had entered the land by force. He produced in court a memorandum of understanding signed between him and the defendant whereby the defendant was to vacate and thereafter was to be paid by the plaintiff Kshs. 65,000/=. The defendant in his evidence laid the blame over this dispute on Gebson Gitonga. He said that Gitonga had taken his title, that is the suit property with a view to obtaining a loan and he was supposed to share the loan with the plaintiff. He denied that he had sold the property to Gitonga. It ought to be noted that Gitonga is not a party in this case. He however said that if the plaintiff pay him Kshs. 75,000/= he was willing to vacate the suit property. That is the simple evidence adduced by the parties in this case. The green card of the suit property reveals that the defendant was the registered owner of the suit property in June 1999. He transferred that property to Gitonga in August 1999. Gitonga in turn transferred it to the plaintiff. The plaintiff, according to the green card, is the registered owner of the suit property. Section 27(a) of the Registered Land Act confers certain interest on those who are registered as owners of property. The section provides:-

“27. (a) 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:

It is clear that that section supports the plaintiff's claim. The plaintiff is entitled to use the suit property and to seek for eviction of the defendant. The defendant even though he said that he was willing to vacate the land on being paid Kshs. 75,000/- did not file a counter claim for the same. This court cannot entertain his prayer. The plaintiff was a *bona fide* purchaser without notice. The plaintiff has proved his case on a balance of probability and he shall have judgment as follows:-

- 1. The defendant shall vacate parcel No. Igoji/Kiangua/1744 within 30 days from this date hereof and in default an order of eviction shall issue.***
- 2. The plaintiff is awarded general damages of Kshs. 10,000/=. The plaintiff did not prove mesne profit and the claim fails.***
- 3. The plaintiff is awarded costs for this suit.***

Dated and delivered at Meru this 30th day of October 2009

MARY KASANGO

JUDGE