



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 13 of 2003

PETER NJIRU MOSESPLAINTIFF

VERSUS

JOSEPH GATIA WAMBUGU.....1ST DEFENDANT

MURIITHI MWANGI.....2ND DEFENDANT

JUDGMENT

Peter Njiru Moses the plaintiff in this case is the registered owner of that parcel No. Ngariama/Thirikwa/2071 which he purchased and paid for from Muriuki Wambugu. Before the plaintiff purchased the land the first Defendant had allowed 2nd Defendant to occupy a portion of land and to cultivate a portion of the land that is now comprised in the land registered in plaintiff's name. The evidence is that the subdivision and registration of parcel No. Ngariama/Thirikwa/2071 was ordered by court. Thereafter the plaintiff purchased the land from registered owner one Muriuki Wambugu who was then registered as proprietor as shown in Paragraph Exhibit 1. The plaintiff was registered on 12.6.2001. The history of plot No. 413 is shown in plaintiff Exhibit 7. Plot No. 2070 measuring Ha.1.45 was a subdivision of plot No. 413. Thereafter plot No. 2070 was subdivided into plot No. 2071 & 2072. It is subdivision 2071 that Peter Njiru Moses (Plaintiff) purchased and title issued to him on 13/6/2001.

Therefore it is clear that certificate of title Ngariama/Thirikwa/413 held by first Defendant is not now in use that land was subdivided and 1 ½ acre of that land was purchased by the plaintiff and he was registered as proprietor. The first Defendant states that there is a case in Nyeri High Court but this relates to a dispute between Muriuki Wambugu and Joseph Gatua first Defendant. The plaintiff is not a party in that suit. That case will be decided separately and the outcome will not be in the name of plaintiff herein. The plaintiff also claims for the eviction of second defendant. The second defendant in his evidence said he is on the land as he was permitted by first Defendant to cultivate. He is not registered at all and therefore I find he has no business occupying the plaintiff's land. The defendants filed a joint statement through advocate Mr. Miana Gacheche who denied the plaintiff's claim by saying that there is suit pending in Nyeri High Court. At the trial of this case defendants were acting in person. There was allegations of cheating but no evidence was tendered to prove such allegations. However on the side of the plaintiff he was able to show that the transfer was open and through court orders.

I have perused the HCC. Misc.No. 103/2000 at Nyeri. The last action taken was on 20/11/2003. It is not clear what is the present position of those proceedings. The plaintiff cannot be delayed indefinitely in his claims .

Upon considering all aspects of the evidence tendered by both parties, I find that the plaintiff is the registered proprietor of plot No. Ngariama/Thirikwa/2071 (1 ½ acres). While the first Defendant has no

interest therein plot no. 413 for which he holds title no longer exists after subdivision. The second defendant only cultivates a small portion of land upon which he has some coffee trees.

In these circumstances, I find the plaintiff's claim proved and I enter Judgment for plaintiff as prayed in the plaint against both defendants.

No order as to costs is made.

Dated 18/1/2008.

J. N. KHAMINWA

JUDGE

Deputy Registrar to ensure the Nyeri file is returned to Nyeri Registry forthwith.

J. N. KHAMINWA

JUDGE

18/1/2008

Khaminwa – Judge

Njue – Clerk

Mr. Kenneth

Githinji H/B for Wanjiru

Defendants; Joseph and Muriithi present.

Read in open court.

J. N. KHAMINWA

JUDGE