



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 98 OF 2006

BEATRICE K. KARERIAPLAINTIFF

VERSUS

MBOGO KAUGA.....DEFENDANT

JUDGMENT

The Plaintiff filed a plaint against Defendant seeking orders for the eviction of the Defendant from her land comprised in title number Mbeti/Gachuriri/1071 in his defence the Defendant admits that demand notice of intention to sue him has been given but he refuses to vacate the land. Defendant has also counter claimed against the plaintiff seeking canceling of the plaintiff's name from that title and his name be registered as proprietor and in the alternative a declaration that the defendant has acquired rights to the title under the doctrine of adverse possession. Parties gave evidence and produced exhibits. Plaintiff Exhibit 4 shows that the parcel of land in dispute was a subdivision of parcel 173 and on 22/4/1996 the registered proprietors were:-

- Ngari Ndegenye
- Stephen Nyaga
- Nginya Mika
- Ephantus K. Ngawa
- Benjamin Ileri

The said persons were registered trustees of Gamumu Group Ranch.

On 11.11.1997 the registered proprietor was Beatrice K. Kareria and she was issued with Title Deed exhibited as P. Exht 1 dated 11.11.1997.

Her oral evidence was that she was a member of a group pending group dissolution who owned the land plot No. 173 which was later subdivided and she was given plot **No. Mbeti/Gachuriri/1071**. She denied being involved in the alleged fraud. Note the particulars of fraud pleaded by defendant paragraph 11 of Defence was committed by a group known as Gamumu.

PW2 Stephen Ngawa Nyaga one of the person named as trustees in the Green card confirmed that the plaintiff was a member of the group and as the group was dissolved the plaintiff was given her parcel of land and registered as proprietor. The witness PW2 testified that when the group was dissolved Notice was given to clans to forward names of their members to be given land. The defendant's claim did not

forward his name as he had plots elsewhere. He also confirmed that the manner of transfer was not fraudulent. Authority was obtained from Director of Group Ranches in Nairobi in 1993. PW2 also disclosed that there was a suit filed by Defendant PMCC 40/94 and HCCA No. 10/1996 where the Defendant was claiming a piece of land but his claims were dismissed. The plaintiff called other witnesses who supported her case. On the part of Defence the Defendant gave evidence called 2 witnesses. The defendant and his witnesses emphasized that the defendant had been occupying time upwards of 20 years and that he has developed the land. The defendant himself said that matter was in court in the year 2001 but he did not move. He said he cannot move because the land belongs to his family and the same should be declared his.

Upon considering the evidence offered by both parties, it is my finding that the issue of ownership of the land in dispute is to be resolved in favour of the plaintiff the evidence of how she obtained transfer of the land is clear and proved. No fraud is proved in the manner she obtained title. On the issue of the eviction of the Defendant it is clear that the defendant was given notice to quit when the plaintiff became because the registered proprietor. He admits receiving the notice but definitely has resisted to vacate. The plaintiff as proprietor is entitled to order of eviction as the Defendant resides and occupies her land without her consent.

The other issue is the claims of the Defendant. I have already stated that there is no proof that the plaintiff obtained the land by fraud. Therefore her title cannot be cancelled on this ground.

Counterclaim is dismissed with costs to the plaintiff. The defendant shall vacate plaintiff's land within the next 60 days failing which the execution of decree against him shall proceed.

It is so ordered.

Dated this 12th February, 2008.

J. N. KHAMINWA

JUDGE

12/2/2008

Khaminwa – Judge

Njue – Clerk

Plaintiff present

Defendant present

Read in open court

J. N. KHAMINWA

JUDGE