



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

Civil Appeal 16 of 2005

LOISE RUGURU KIMANI.....APPELLANT

VERSUS

NELSON NDEGE GATIMU.....RESPONDENT

JUDGMENT

This appeal arises out of Judgment and decree delivered on 9/2/2004 in Wanguru Senior Resident Magistrate's Civil Case No. 75 of 2004.

In that case the Plaintiff/Appellant case was dismissed with costs. The dispute as disclosed in the record is that the plaintiff/Appellant claimed a portion measuring 15ft X 40 ft of a lock up No.38 at Wanguru market having bought it from Gideon Njenga the deceased husband of Defendant but that the defendant has since 1997 interfered with Plaintiff's possession without any claim. The plaintiff/Appellant was therefore seeking court's assistance by issuing permanent injunction against the Defendant. The plot No. A 38 A (1/2 plot) was acquired in 1994 by appellant after a purchase from deceased aforesaid. He was issued with approval by Kerugoya County Council on 21/2/2005 many years after acquisition. After the death of the person who sold the plot to him how could the council approve his purchase and authorize joint ownership after the death. The plot was a private property. Not of the council. His evidence was that the Defendant has developed the whole plot. And the Defendant's husband is registered as a proprietor of the plot and her daughter was living in the house on the plot. The defendant Respondent denied the alleged purchase of the half plot by the Appellant. She also testified that her deceased husband had purchased the plot from another private person. The plot is still in the name of her deceased husband

From the evidence on the record the Appellant raised his claims only after the death of Respondent's husband. It is from that evidence that the Trial Magistrate found it strange that the dispute arose after deceased demise. The Trial Magistrate found that there was no evidence that the Appellant purchase the ½ plot from the Defendant husband. There was no evidence apart the Appellant's allegations. There was no evidence in writing and the Appellant had not taken possession of what he says he purchased. Indeed the Appellant was not able to produce receipt for the money he says he paid for the ½ of plot to deceased. The Trial Magistrate then found that a permanent injunction could not be issued against the defendant.

I have carefully examined the record and the Judgment of the Trial Magistrate's court and I find that there was no evidence to support the appellant's case. It is true that Appellant had slept on his rights. He did not make his claims during the 6 years the seller was alive on ground No. 3 the County Council had no authority to interfere with private property. In the circumstances there was no evidence to warrant issue of orders sought by Appellant. The Appellant had not proved his ownership of the plot and therefore he was not entitled to an injunction.

The appeal is dismissed with costs to Respondent.

Dated this 12th February, 2008.

J. N. KHAMINWA

JUDGE

12/2/1008

Khaminwa – Judge

Njue – Clerk

Daniel – present

Monica – Present

Judgment read in open court.

J. N. KHAMINWA

JUDGE