



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 75 of 2007

PAXTON MAIN MUGO 1ST PLAINTIFF

JANE WAMBUI MAINA 2ND PLAINTIFF

VERSUS

MAURICE CHRISWA WANEKAYA DEFENDANT

JUDGMENT

I: Background

Maurice Chiserwa Wanekaya, the defendant herein bought the suit property known as LR Nairobi Block 111/695 and was financed by the Housing Finance Company of Kenya at a sum of almost Ksh.900,000/-. He failed to pay this mortgage. He was to be sued when he filed, in the Chief Magistrate court, a suit No.13795/06 disputing the transfer of the property to any third party.

2. The suit in the Chief Magistrates Court contravened section 159 of the Registered Lands Act Cap.300 in that the said court had no jurisdiction to deal with the case. The Housing Finance Company sold the property in an auction. This is according to the powers that was given to them under the charge with the defendant.

3. The new buyers of the property then filed this present suit seeking the orders of this court to evict the defendant from the suit premises.

4. The defendant having been duly served failed to appear to court on the day called out for hearing. The trial proceeded

exparte.

II: Trial

5. In their evidence, the two plaintiffs stated that they rightfully purchased the premises in question. PW1 produced the title deed of the property together with the particulars of properties document that shows the statutory power of sale as conferred upon the sellers under the Registered Lands Act Cap.300.

6. The public auction declared him the buyer saw the transfer of the property to the plaintiff.

III: Opinion

7. The plaintiffs have demonstrated to this court that they purchased the suit property whereby they were duly registered with a certificate of lease of 26 December 2006.

8. They are unable to obtain vacant possession of the said premises. This court accordingly grants them the first prayers as prayed on grounds that the title acquired by the sale of property by a mortgagor exercising this right of sale cannot be impeached.

Ze Yu Yang v Nova Industrial Products Ltd

(2003) I EA 362.

9. I enter judgment in favour of the plaintiff against the defendant on the first prayer that vacant possession of the property be given to them. That the defendant be evicted from the premises through the **Court Bailiffs of the High Court of Kenya.**

10 The prayers for mense profits was not particularized nor spoken and or adequately pleaded to court. The same is rejected as having not been proved.

11. I award the costs of this suit to the plaintiffs.

DATED THIS 12TH DAY OF JUNE 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

A. Okwengu instructed by Okwengu & Co. Advocates for the plaintiff - present

Onindo instructed by Onindo & Associates Advocates for the defendant - absent