



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE 294 OF 2005**

**LYDIA NYAMBURA KARIUKI.....PLAINTIFF**

**VERSUS**

**MWANGI KARIUKI.....DEFENDANT**

**JUDGMENT**

In her plaint the plaintiff claims that she is the registered owner of the piece of land known as Kiambogo/Miroreni Block 1/253 (the suit piece of land) containing by measurement 7.262 hectares or thereabouts. Without any colour of right, her consent or authority, the defendant has on several occasions trespassed on the suit piece of land by planting beacons thereon and felling trees. On 31<sup>st</sup> March 2005, he caused a caution to be registered against the title to that land on fraudulent representations to the Land Registrar that he had a purchaser's interest in the land. She therefore prays for the defendant's eviction from that land and the removal of the beacons he had planted, an order directing the Land Registrar to remove the said caution as well as injunction to restrain the defendant by himself, his servants or agents from interfering with the Plaintiff's enjoyment of the suit piece of land as well as for the costs of this suit and interest.

Upon being served the defendant did not file a defence within the 15 days given in the summons. He filed a defence on 8<sup>th</sup> August 2006 after interlocutory judgment had been entered on 28<sup>th</sup> June 2006. In that defence he claims that the plaintiff is only an administrator and not the owner of the suit piece of land whatever that means and that it is because of the plaintiff's refusal with his rightful share that he caused a caution to be registered against the title. He further states that there are three suits relating to the suit property that is Nairobi High Court Civil Case No. 352 of 2006 and two others at Thika.

That defence was apparently not served on the plaintiff's advocates as they subsequently fixed the case for formal proof. That notwithstanding the defendant was, on 5<sup>th</sup> June 2008, served with a hearing notice for the formal proof of this case on 2<sup>nd</sup> July 2008 but never appeared in court. Upon being satisfied with the service I allowed the plaintiff to proceed with the hearing of the case ex-parte.

In her evidence before me, the plaintiff basically repeated the averments in the plaint and produced a copy of the title relating to the suit piece of land showing that it is registered in her name and a search certificate which has the caution registered by the defendant against the title claiming a purchaser's interest. She further stated that the suit piece of land was allocated to her by virtue of her shares in Itherero Farmers Company Limited. She produced a share certificate issued to her by that company and prayed for judgment as prayed in the plaint.

I have perused the pleadings and considered this evidence. In his defence, though filed out of time, the defendant does not state how his share of the suit property arises. He has also not stated what the other suits in Nairobi and Thika are all about except merely alleging that they are on the same subject matter. On the uncontroverted evidence of the plaintiff, I am satisfied that she is the registered proprietor of the suit piece of land and that the defendant has no right to occupy it or interfere with her quiet possession of it. In the circumstances I enter judgment for the plaintiff with costs as prayed in the plaint.

DATED and delivered at Nakuru this 3<sup>rd</sup> day of July, 2008.

**D. K. MARAGA**

**JUDGE**