

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 76 of 2007

CHARLES NJIRU JOHN.....PLAINTIFF

VERSUS

NDWIGA MURUAMBUI.....DEFENDANT

JUDGMENT

The plaintiff through Duncan Muyodi & Co. Advocates filed this suit on 19/9/2008 against the defendant for the following prayers:-

- (a) That the defendant himself, his family, servants and/or agents do remove themselves and his/their properties from land parcel number KAGAARI/KANJA/3239 and/or do give vacant possession of the said land to the plaintiff within 30 days from the date of Judgment and in default the defendant himself, his family, servants and/or agents and their properties be removed or evicted from land parcel No. KAGAARI/KANJA/3239 within 60 days from the date of this Judgment.
- (b) Costs of the suit and interest.

The defendant was duly served with the plaint and summons. An appearance was entered on his behalf by RUGAITA&CO. ADVOCATES but no defence was filed. His counsel was later on 20/5/2008 allowed to cease acting for him. The defendant was therefore thereafter served with the hearing notice for today's date in person on 7/8/2008 as is evidenced by the affidavit of service dated 27/10/2008. He did not show up for the hearing today and so the matter proceeded Ex-parte.

Upon hearing the plaintiff and perusing his exhibits, I have made a finding that this matter is very straight forward indeed. It is an open and shut case. The plaintiff has exhibited a copy of the Register (P.Exh.1) which clearly show that he bought the land in question and the same was transferred to him in 1999. He was issued with a Title Deed which he said he charged to the bank to secure a loan of 600,000/-. This abstract of the register does not reflect any interest whatsoever that can be linked to the defendant herein. In the absence of a statement of defence by the defendant, to explain his occupation of the land in question, the court cannot but find that the defendant is a trespasser on the plaintiffs land. The totality of the evidence on record shows that the plaintiff is the rightful registered owner of parcel No. KAGAARI/KANJA/3239, and further that the defendant is a trespasser thereon and he has no claim whatsoever or any color of right to remain on that land.

My finding therefore is that the plaintiff has proved his case against the defendant on a balance of probabilities. I enter Judgment for him as prayed in the plaintiff but direct that the plaintiff be evicted from the land after 90 days from the date of this Judgment. He should be served with the notice of this order immediately for compliance. The plaintiff is also awarded costs of the suit plus interest thereon on the lower scale since although a memorandum of appearance was filed, the defendant did not file any defence.

Orders accordingly.

W. KARANJA

JUDGE

Delivered, dated and signed at Embu this...29thday of October, 2008.

Presence of:-