

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Case 269 of 2000

PHILOMENA WARIGIA WAWERU.....PLAINTIFF

VERSUS

PATRICK MBUGUA.....1ST DEFENDANT

MARGARET WANJIKU.....2ND DEFENDANT

MILKA WAMBUI.....3RD DEFENDANT

NAOMI WANJIKU.....4TH DEFENDANT

KARANJA KIMANI.....5TH DEFENDANT

JUDGMENT

The plaintiff avers in her plaint that she is the registered proprietor of all that piece of land situate in Gigilgil comprising 2.002 hectares or thereabout and known as Title No. Gilgil/Gilgil Block 1/565 (Kekopey). She further avers that without any colour of light or her consent the defendants had entered and constructed houses on it and despite demand they are living on and cultivating it. She therefore prays for a declaration that she is the owner of that piece of land and an order to evict the defendants therefrom as well as an injunction to restrain them from returning thereto.

Upon being served the defendants filed a general defence in which they denied literally everything. On the hearing date, though their advocate was served, neither the defendants nor heir advocates appeared. Upon perusing the affidavit of service I allowed the plaintiff to proceed ex-parte. In her testimony the plaintiff stated that on 18th May 1982, she bought shares in Agricultural Industrial Holdings Ltd from one Kuria Thiongo Mugatha. By virtue of his shareholding Mr. Mugatha had been allocated the suit piece of land. Upon purchase of his shares the suit piece of land was transferred to the plaintiff. After paying survey fees like other members of that company the survey of the company's piece of land at Gilgil was completed and the plaintiff was issued with a Title Deed relating to the suit piece of land. After fencing it the plaintiff went out of the country and returned in 1999. In March 2000 she received a letter from one Mary Wangui Mugo that she should go to the company's offices in Nairobi and give them the title. At the company's offices in Nairobi she was told that the writers of that letter had also been there and claimed that she had sold the piece of land to them. She had not. She thereafter demanded vacant possession from the defendant but they failed to vacate necessitating this suit. She urged me to grant her claim as prayed in the plaint.

As I have said, neither the defendant nor their advocate appeared during the hearing. At the hearing the plaintiff produced documents including a copy of the Title Deed and a Search Certificate showing that she is indeed the registered owner of the suit piece of land. On this uncontroverted evidence I grant her claim as prayed in the plaint.

DATED and delivered at Nakuru this 27th day of November, 2008.

D. K. MARAGA

JUDGE