



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 36 of 2004

ESTHER JEMUTAI BOINNET.....PLAINTIFF

VERSUS

GRACE NYANCHAMA ONGERI.....DEFENDANT

JUDGEMENT

Esther Jemutai Boinnet the plaintiff herein is also the registered absolute proprietor of a parcel of land **Title No. NAKURU Municipality/Block 23/374**. She filed this suit against **Grace Nyanchama Ongeri** whereby she has sought for orders of :

- a) *A declaration that the defendant is not entitled to enter occupy or construct a dwelling house or any other house or at all in L.R. No. Nakuru municipal Block 23/374 and that she has trespassed thereon.***
- b) *An injunction restraining the defendant whether by herself, servant or agent or otherwise howsoever from occupying, selling, alienating, constructing a dwelling house or any house or at all or in any way dealing with Nakuru Municipal Block 23/374.***

Briefly stated, the plaintiff's case was that on or about 10th July, 2003 she discovered that somebody was constructing on her parcel of land. She thus consulted her advocates M/s Sheth Wathigo Advocates who wrote the letter dated 10th July, 2003 and requested the defendant to immediately stop the constructions on the suit premises.

The plaintiff gave evidence of how she acquired the suit premises through her membership with the Nakuru Housing Society. She produced the payment receipts for the monies she paid for her share in the above society. She also produced the original share certificate for her one (1) Share in the Nakuru Housing and Development Co. Limited subsequently she balloted for the plots and she was allocated plot No. 374 on 18th March, 1980. She was issued with the certificate of lease on the said plot. These original documents were produced as exhibits as well as a property section of the extract of title which were issued on 10th July, 2003 to the plaintiff. When the plaintiff inquired from the young men at the construction site of the suit premises about the person who was constructing on her plot, she was shown a sale agreement purportedly entered between her and the defendant for the sale of the suit premises at the price of kshs.330,000/=. The plaintiff said she had not entered into any agreement with the defendant nor did she sign any Transfer of the plot. She also did not know the defendant or an advocate called Ikua who purportedly prepared the sale agreement. The plaintiff thereafter reported the matter to the police and

four people were arrested in connection with the purported sale of the suit premises. The plaintiff produced a copy of her National identity to show that she is the one registered as the proprietor of the suit premises which has irregularly been taken over by the defendant.

The plaintiff also relied on the evidence of **Susanne Muchemi a Land Registrar** at the Nakuru Lands Registry, she brought to court records held at the Lands office to show that the registered owner of the suit premises is the plaintiff and the land has never been transferred to anybody else. On cross-examination she denied that this was a case of double registration as there would be two records and in this case only one record exists.

On the part of the defendant, **Naptali Machonge Moragwa (DW1)** gave evidence on behalf of the defendant. According to this witness, the defendant is a resident of United States of America and he authorised this witness to purchase on her behalf a plot in Nakuru Town.

This witness said he met an Agent by the name **Johnson Njuguna Wambugu** who showed him the plot and gave him the particulars of the plot. He conducted the title search and established the plot was in the name of **Esther Boinet Jemutai**. They agreed on the purchase price of the plot at Kshs.320,000/= and the Agent asked this witness to deposit part of the purchase price of Kshs.100,000/= with the advocate by the name ikua.

This witness duly paid the deposit and an agreement was signed before the said lawyer and the seller who he described as the owner of the plot had an identify card that matched with the title and she said she was Esther Boinet Jemutai. Subsequently this witness completed the payment of the purchase price and he was issued with payment receipts.

According to (DW 1) the said lady who sold to him the plot was not the plaintiff. He said he met the plaintiff when he was recording a statement at the CID and later in court. He admitted that they discovered they were cheated and the matter was reported to the police and the Agent and the person who purported to sell the property were charged before the Senior Resident Magistrate's Court in Criminal Case No. 2210/03.

I have carefully considered the evidence adduced in this mater and all the documents produced as exhibits. There is no dispute that the suit premises belongs to the plaintiff and she is the absolute proprietor. There is also no dispute that she did not enter into an agreement with the defendant for the sale.

DW 1 was categorical that he dealt with another lady and indeed they were conned and as a result the persons who were involved in the fraud have been charged with a criminal case.

The validity of the plaintiff's documents was confirmed by the land registrar. I am satisfied that the plaintiff has proved her case to the required standard that she is the registered proprietor and therefore she is entitled to a quiet and uninterrupted possession. The persons who purported to enter into sale agreement did so fraudulently, they had no title to possess the land to sell and as it was confirmed through evidence the title issued to the defendant is a forged document it is not capable of vesting any proprietorship.

Accordingly judgement is entered for the plaintiff by way of:

- 1. A declaration that the defendant is not entitled to enter occupy or construct a dwelling house or any other house or at all in L.R. No. Nakuru municipal Block 23/374 and that she has trespassed thereon.***
- 2. An injunction restraining the defendant whether by herself, servant or agent or otherwise howsoever from occupying, selling, alienating, constructing a dwelling house or any house or at all or in any way dealing with Nakuru Municipal Block 23/374.***
- 3. Costs of the suit shall be awarded to the plaintiff.***

It is so ordered.

Judgement read and signed at Nakuru this 21st day of July, 2006.

MARTHA KOOME

JUDGE