



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**Civil Case 7 of 2004**

**GLADYS NEKOYE MUKUNGA.....PLAINTIFF**

**VS**

**ELGON RELIGIOUS SOCIETY OF FRIENDS.....DEFENDANTS**

**J U D G M E N T**

In a plaint dated 19th January 2004 Gladys Nekoye Murunga, the plaintiff herein sought for the following orders against Elgon Religious Society of Friends, the defendant herein:

- (i) A declaratory order that the defendant has no right to be or to remain on Land Parcel No. KIMILILI/KAMUKUYWA/ 1408 herein after referred to as the suit premises.*
- (ii) An order of demolition of the structures standing on the suit premises.*
- (iii) A permanent order of injunction restraining the defendant from encroaching on the suit land*
- (iv) Costs of the suit.*

Summons were served upon the defendant but the defendant failed to enter appearance within the stipulated time hence the interlocutory judgment. This suit therefore proceeded for hearing as a formal proof.

The plaintiff testified without calling any other witness. She told this court that the defendant bought land measuring 3 acres from her late father Zephaniah Murunga Lusweti.

She told this court that her father passed away in 1995 before giving title to the defendant. The 3 acres were to be excised from L.R. NO. KIMILILI/KAMUKUYWA/337. She produced in evidence a copy of a certified copy of a certificate of confirmation grant in respect of the estate of Murunga Lusweti (deceased) to prove that she was the legal representative of the estate of her deceased father.

The plaintiff further told this court that she subdivided L.R. NO. KIMILILI/KAMUKUYWA/337 into two parcels of land namely KIMILILI/KAMUKUYWA/1407 and KIMILILI/KAMUKUYWA /1408. She claimed that she was given the 3 acres of land by her deceased father while he was alive. She managed to have 3 acres transferred to her as L.R. NO. KIMILILI/ KAMUKUYWA/1408 after

subdivision. She produced a certified copy of the register in evidence. She also told this court that she managed to have L.R. NO. KIMILILI/KAMUKUYWA/1407 subdivided in which L.R. NO. KIMILILI/KAMUKUYWA/2268 was parceled out and transferred to the defendant. Gladys Nekoye Murunga further produced a certified copy of the register in respect of L.R. NO. KIMILILI/KAMUKUYWA/2268 to show that the same is now duly registered in the name of the defendant. Gladys Nekoye Mukunga v Elgon Religious Society of Friends [2005] eKLR

The plaintiff informed this court that the defendant had put up structures on the suit land before obtaining a title deed. She claimed she has made written demands to the defendant to remove the offending structures. She even produced in evidence two letters written by the defendant to its agent directing him to move out of the suit premises. Two letters, one dated 7.1.2004 and another dated 5th February 2002 written by the defendant were produced in evidence to show that the defendant had no interest over the suit premises. The letters seem to give the plaintiff authority to remove the structures standing on the suit premises.

After receiving the plaintiff's testimony I think two main issues came up for my determination. The first issue is whether the plaintiff had established a prima facie case?

Secondly whether the plaintiff is entitled to the prayers made in the plaint? I will start with the first issue. The plaintiff was able to establish that she is the registered owner of L.R. NO. KIMILILI/KAMUKUYWA/1408. She was also able to show that the defendant has its own land known as LR. NO.

KIMILILI/KAMUKUYWA/2268. In both cases she produced certified copies of the register to establish her claim. The plaintiff also managed to show that the defendant had written to the plaintiff to confirm that it had no interest in the suit premises. I am convinced that the plaintiff has proved that she has proprietary interest over the suit premises. She has therefore established a prima facie case.

In view of my above finding I am satisfied that she is entitled to the prayers enumerated in the plaint.

In the end, Judgment is entered in favour of the plaintiff as against the defendant as prayed in the plaint.

**DATED AND DELIVERED THIS 13th DAY OF May 2005**

**J.K. SERGON**

**JUDGE**