

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT 399 OF 2000

MATHEW NJUGUNA NGANDA.....PLAINTIFF

VERSUS

CATHOLIC DIOCESE OF NAKURU.....DEFENDANT

JUDGMENT

The plaintiff sued the defendant alleging that it had persistently trespassed on the plaintiff's parcel of land L.R. No. NYANDARUA/MAWINGO SALIENT/16221/1 (hereinafter referred to as "the suit land"). The defendant bought the suit land in a public auction that was conducted by M/S Nasioki Auctioneers on instructions of Kenya Commercial Bank Ltd. after the plaintiff defaulted in payment of a loan that had been advanced to him by the bank. The plaintiff therefore sought to restrain the defendant from trespassing or taking possession of the suit land.

The defendant filed a statement of defence and a counter-claim and stated that it lawfully purchased the suit land from a public auction. In its counter-claim, the defendant stated that the plaintiff was a trespasser into the suit land since it had lawfully purchased the same and the property had been registered in its name.

The defendant averred that the plaintiff was cutting down indigenous trees on the land and burning the same for firewood and that was causing the property to lose value. The defendant prayed that the plaintiff's suit be dismissed with costs. It also sought an eviction order against the plaintiff, his servants, agents and all those residing with him from the suit land as well as general damages for trespass, mesne profits from 15th June 2000 until vacant possession, exemplary damages plus costs.

On 3rd May, 2001 the plaintiff's suit was withdrawn with costs to the defendant. When the defendant's counter-claim came up for hearing on 26/5/05, the plaintiff and his counsel never attended court and so the defendant's case was heard ex parte. The defendant called one witness Ernest; Kamau Murimi, the Executive Secretary, Justice and Peace Commission of the defendant. He testified that the defendant purchased the suit land on 15/6/2000 through a public auction and paid the full purchase price of Kshs.7 million. The title to the land was thereafter transferred to the defendant but when the defendant tried to take possession of its land the plaintiff resisted. The issue of ownership of the suit land was determined in the defendant's favour in HCCC No. 116 of 2001 where judgment was delivered on 10th November, 2004. The proceedings and the judgment in that matter were produced before the court. That determination notwithstanding, the plaintiff still refused and or failed to grant vacant possession to the defendant. The plaintiff was said to be grazing and cultivating the land and cutting down trees thereon.

I find that the defendant has established its case on a balance of probabilities and I order the plaintiff, his servants, and/or agents and any other person claiming under him to vacate the suit land forthwith. If the plaintiff will not have vacated the suit premises within the next ten (10) days from the date hereof, the defendant will be at liberty to take such legal steps as shall be appropriate to evict him therefrom.

The defendant prayed for general damages for trespass, mesne profits from 15th June 2000 and exemplary damages. However, no evidence was led to prove those claims. In any event, since the year 2000 the dispute over the suit premises was in court and it was not until 10th November, 2004 when the court determined the same in favour of the defendant. The court was not told whether any appeal had

been preferred by the plaintiff against the said judgment. I will not therefore award any of those damages as claimed. The plaintiff will bear the costs of the counter-claim.

DATED at Nakuru this 14th day of June, 2005.

D. MUSINGA

JUDGE

14/6/2005