



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI
CIVIL SUIT NO. 1987 OF 1998

JOYCE W MWANGI.....PLAINTIFF

VERSUS

SOMBEA ENTERPRISES.....1ST DEFENDANT

ROSAM ENTERPRISES2ND DEFENDANT

EAST AFRICAN BUILDING SOCIETY3RD DEFENDANT

J U D G M E N T

At the commencement of the hearing of the 1st defendant's counter claim the counsel holding brief for the plaintiff's counsel, on being unsuccessful in applying for an adjournment left the court and the hearing proceeded in his absence.

The 1st defendant through its director Mr. Fredrick Kenneth Mungai gave evidence as follows.

That he first saw the advert of the sale of **L.R. No. NAIROBI BLOCK 32/880**, in Ngumo Estate, in the daily nations of 10th and 25th August 1998. The auction of that property was to be conducted by Rosam Enterprises, the 2nd defendants hereof. That the sale was scheduled to take place on 26th August 1998 at 11.00 am at Rosam House in Nairobi.

That D.W. 1 tendered his bid at the sale, alongside with other bidders. At the conclusion the 1st defendant was declared the highest bidder.

The 1st defendant paid to the auctioneers' kshs 662, 500 as deposit and the auctioneers issued it with a certificate of sale. D W 1 produced the certificate of sale and a photocopy of the banker's cheque, representing the deposit, as exhibits in this case. D W 1 paid the final balance of the purchase price, on behalf of the 1st defendant at the 3rd defendant's advocate's office.

Despite being the owner of the suit property D W 1 said that the plaintiff has failed to give the 1st defendant possession. D W 1 said that when he visited the suit property he found the plaintiff in possession and the plaintiff pleaded with D W 1 that she be given more time to look for alternative accommodation.

D W 1 said that he felt compassionate towards her, particularly when he found out that she was a widow with children.

More recently D W 1 visited the suit property and found that the plaintiff had abused his generosity, by renting the 1st defendant's property without authority. D W 1 said that he decided now to seek possession from the plaintiff her agents or anyone else in possession.

The 1st defendant's evidence is uncontroverted and has satisfied the standard of proof, on a balance of probability.

The 1st defendant is accordingly awarded judgment in the following terms: -

(1) An order of eviction to issue against the plaintiff, her servants, agents, tenants or any other persons in possession of L.R. NO. NAIROBI BLOCK 32/880 NGUMO ESTATE.

(2) The plaintiff do pay the 1st defendant its costs of the counter claim.

Dated and delivered this day of 11th February 2004.

MARY KASANGO

JUDGE

In the presence of

.....**for the plaintiff**

.....**for the 1st defendant**

.....**for the 3rd defendant**