

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 262 of 2004

DAVID MBERIRE WAWERU PLAINTIFF

VERSUS

PASTOR MACKENZIEDEFENDANT

JUDGEMENT

The Plaintiff, David Mberire Waweru, instituted this suit on the 19th March 2004 by way of the Plaint dated the 16th March 2004 in which the Plaintiff sought judgment against the Defendant, Pastor Mackenzie, and orders that:-

- (a) the Defendant be evicted from Plot 209/11388/102.
- (b) Costs and interest.
- (c) Such other and further relief as this court may deem fit and just to grant.

The Defendant duly entered appearance on the 19th April 2004 but failed to file his statement of defence within the time prescribed by law whereupon the Plaintiff requested for interlocutory judgment which was entered on the 10th June 2004. The suit then proceeded to formal proof leading to this judgment.

In his evidence, the Plaintiff testified that he purchased the suit property, namely Land Reference Number 209/11388/102 situate in the City of Nairobi, in 1991 and pursuant to an Instrument of Transfer thereof in his favour registered in the Land Titles Registry at Nairobi as Number I.R. 51796/53, was duly issued with the Certificate of Title Number I.R. 53602 dated the 14th August 1991 by the Government of Kenya.

The Plaintiff testified further that on a random visit to the suit property in 1994, he found that the same had been occupied by a person then hitherto not known to him but whom the Plaintiff later came to learn is the Defendant. The Plaintiff established that the Defendant was carrying on business on the suit property as a carpenter and was also preaching thereat for which purpose, and without the Plaintiff's knowledge, consent or authority, the Defendant had erected temporary timber constructions thereon from where he worked and preached.

It was the Plaintiff's further evidence that between 1997 and 2002, he made numerous requests to the Defendant to vacate the suit property but the Defendant refused. The Plaintiff then instructed his Advocates who by letter dated the 13th November 2002 to the Defendant made a formal demand for possession which the Defendant ignored and continues in default to date.

Finally, the Plaintiff stated that having failed to secure possession, and as the Plaintiff had never had any dealings with the Defendant as his tenant or otherwise, the Plaintiff had been constrained to file this suit and prays for the orders sought herein.

I have considered this evidence, which is unchallenged, and I find and hold that the Plaintiff is the lawful registered proprietor as lessee of the Government of Kenya of Land Reference No. 209/11388/102 aforesaid by virtue of the Certificate of Title issued to him, and further that the Plaintiff's ownership thereof is absolute and indefeasible under section 23(1) of the Registration of Titles Act [Cap. 281]. The

Plaintiff has also proved on a balance of probability that the Defendant is a trespasser and is not lawfully in possession of the suit property.

Accordingly, and as an interlocutory judgment has already been entered against the Defendant, it is ordered that prayers (a) and (b) inclusive of the Plaint be and are hereby granted against the Defendant and orders accordingly in the terms thereof.

Dated and delivered at Nairobi this tenth day of December 2004

P. Kihara Kariuki

Ag. Judge