



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 5869 OF 1993

PETER KARANJA MUNGAI PLAINTIFF

VERSUS

DANIEL NJOROGE KAMAU & ANOR DEFENDANT

JUDGEMENT

The Plaintiff's suit was dismissed on 16. 10. 2002 for failure to appear and offer any evidence although the date was given in court in the presence of counsel for both parties. The matter then proceeded to the hearing of the counterclaim filed by the 3rd defendant. Again no evidence was offered by or on behalf of the plaintiff to dispute that counterclaim.

In issue is a parcel of land known as KABETE/NYATHUNYA/1673 which was admittedly registered in the name of the 1st defendant. It is an Agricultural piece of land.

The Plaintiff had claimed that he bought the land from the registered owner but that the owner had reneged on their agreement and failed to transfer it. Instead he had sold it to the 3rd defendant.

The 3rd defendant was joined in the suit and filed his defence and counterclaim on 04. 01. 1995. He averred that he acquired the piece of land for value without notice of anyone else's interest and had obtained the necessary consents for transfer. The transfer was not registered due to a caution lodged against the title by the Plaintiff. He seeks an order for removal of the caution or in the alternative an order compelling registration of the transfer and an Injunction to restrain the Plaintiff or his servants or agents from interfering with the property.

I heard the 3rd defendant testify on oath on his counterclaim. He confirmed that he had purchased the parcel of land and took possession of it. The Plaintiff, he said, was interfering with a portion of it although he has no legal right to do so. He sought the orders prayed for.

There was no cross-examination on that evidence from the plaintiffs counsel who walked in the middle of the evidence. The evidence stands unchallenged and I have therefore no reason to doubt it. I enter Judgment on the counterclaim and grant the orders as prayed in the counterclaim. Costs of the counterclaim to the 3rd defendant. Dated this 24th day of October, 2002.

P. N. WAKI

JUDGE

24. 10. 2002

Waki J.

Kubatia for Plaintiff

No appearance for Defendant

CC: Mulinge

Judgment delivered dated and signed in chambers.

P. N. WAKI

JUDGE

KUBATIA

I apply for stay pending a formal application.

ORDER:

Temporary stay for 14 days.

P. N. WAKI

JUDGE