



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 5638 OF 1992

BERNARD B.K. NGURU PLAINTIFF

VERSUS

HOUSING FINANCE COMPANY OF

KENYA AND ANOTHER DEFENDANTS

J U D G E M E N T

High Court Civil Case Nos.5638 of 1992 and 2500 of 1994 were consolidated but when they were fixed for hearing on 25th April, 2001 the plaintiff in High Court Civil Case Number 5638 of 1992 did not turn up to prosecute his case.

Though his counsel was present and he asked for an adjournment the court was not convinced there were good grounds for it, hence refused to grant the adjournment.

An attempt by counsel to circumvent this by applying to withdraw from the suit was also refused by the court. Consequently upon this counsel for the first and 2nd defendants sought dismissal of this suit as against their clients and that High Court Civil Case No.2500 of 1994, the plaintiff who was present testified in court against the defendant and said she had met the latter in one of the sessions in court in this case.

That she was the registered owner of plot number NAIROBI/BLOCK 78/485 situate at Buruburu Phase 4 after buying it at a public auction on 28th August, 1992.

She produced copy of the title, memorandum of sale, transfer; and change to confirm her ownership of this property.

The plaintiff, however, complained that since she purchased the property, she had never taken possession thereof because the defendant was living there but was not paying any rent to her.

She prayed for an eviction order against and payment of rent by the defendant since 1992. She also prayed for costs of the suit.

From the evidence adduced by the plaintiff, I believe L.R No. NAIROBI/BLOCK 78/485 is in issue in both High Court Civil Case Number 5638 of 1992 and High Court Civil Case No.2500 of 1994.

And reading through the two records the plaintiff in the former is querying the illegality of the sale of the plot to the plaintiff in the latter.

But I gather that because he still occupies the suit property to the prejudice of the purchaser, he is not in any hurry to move his Civil Case Number 5638 of 1992. I have this in mind when I ruled against an

application for adjournment in that case.

As regards the plaintiff's case herein, it is not challenged as the defendant did not turn up in court to contest it. She produced copies of relevant documents to confirm ownership of this property which she bought through a public auction.

That these documents were copies of the originals did not impair her case since she gave reasonable explanation as to where the originals were. The defendant's case – HCCC No. 5638/92 queries the sale of his property to the second defendant (plaintiff herein) and this tends to support the plaintiff's case of the purchase and/or ownership of the suit plot.

In my view, there is no reason why the plaintiff should not get an eviction order as sought in her case. She purchased the suit flat during 1993 and has not enjoyed the fruits of her sweat. I grant her that order to take effect 3 months from today.

In fact she said that she had mortgaged the property for a loan from National Social Security Fund and that she is repaying the loan thereon. She did not however, tell the court how much goes to loan repayment.

However, from the schedule in exhibit 4 the loan taken was Kshs.617,400/= repayable in monthly instalments of Kshs.4,075/=.

Thus, if anything, the plaintiff has been losing this sum from her entitlements to repay the loan which she should be awarded in form of mesne profits from 30th November 1993 till payment thereof in full. This money, should carry interest at court rates from the date of this Judgement. These are the orders of this court.

Delivered, dated and signed this 10th day of May, 2001.

D.K.S AGANYANYA

JUDGE