



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ENVIRONMENTAL AND LAND DIVISION**

**ELC CIVIL SUIT NO. 2472 OF 1996**

**MARY MICHERE NJUGUNA..... PLAINTIFF**

**VERSUS**

**JOHN BAPTIST WACHIRA..... DEFENDANT**

**JUDGEMENT**

The Plaintiff by plaint dated 3<sup>rd</sup> October 1996 filed the present suit seeking:-

- a. an order that the Defendant be ordered to transfer **L.R. NO. BLOCK 76/156 Buru Buru** to the Plaintiff and in defendant the Deputy Registrar of the Honourable court be ordered to execute the transfer documents to the said land;
- b. Costs of the suit ;
- c. Any further or better relief as this Honourable court may deem fit to grant.

The plaintiff by the plaint contends that by an agreement made in writing in 1986 the defendant sold the said property **L.R. BLOCK 75/156** to the plaintiff's husband one **Samuel Njuguna Mburu**. The Defendant vacated the suit property and the plaintiff's husband died in December 1992 by which time the house was vacant. The plaintiff moved into the house with her children and contacted the Defendant to complete the transaction but the Defendant never obliged save that in September 1996 the Defendant attempted to have the Plaintiff vacate the house as he wished to sell the property to another person which the plaintiff resisted. The Plaintiff obtained limited grant to the estate of the late **Samuel Njuguna Mburu in the High court succession cause NO. 305 of 1993** on 10<sup>th</sup> March 1993 and contends that she is entitled to bring this action as the personal legal representative of her deceased husband.

The Defendant filed a statement of defence denying the contents of the plaintiff's plaint and contended that the plaintiff had illegally and unlawfully trespassed into the Defendant's land parcel **L.R. NO. Nairobi/block 76/156** and refused to vacate despite the Defendant's request and notice to do so. The Defendant denied the plaintiff had legal capacity to sue the defendant and contended the plaintiff had no cause of action against him. The Defendant further denied ever selling **L.R.NO. Nairobi/Block 76/156** to the plaintiff's husband or having received any money from the Plaintiff's husband and contended that the plaintiff was but a trespasser who was in unlawful occupation of the defendant's property.

This matter was fixed for pretrial directions on 16/5/2013 when only the plaintiff's counsel appeared and the plaintiff had made compliance with the provisions of order 11 of the Civil Procedure Rules. Although the matter was refixed for pretrial directions on 18<sup>th</sup> June 2013 and 18<sup>th</sup> July 2013 the Defendant did not attend and did not comply with the provisions of order 11 of the Civil Procedure Rules. The court fixed

the suit for hearing on 6<sup>th</sup> November 2013 and on the date of hearing neither the Defendant or his Advocates attended though the hearing notice had been served on the Defendant's Advocates.

The hearing of the suit proceeded *ex parte* and the Plaintiff testified that her husband (now deceased) purchased the suit premises being house **NO.76/156 Buruburu phase 3 Nairobi** pursuant to an agreement for sale dated 6<sup>th</sup> February 1986. That the purchase price for the property was Kshs.300,000/-. That the Defendant on 5<sup>th</sup> March 1986 acknowledged receipt of Kshs.200,000/- towards the purchase price and committed to authorize the respective authorities to effect the transfer of the property. The plaintiff testified that her husband died in December 1992 and that she and her family took possession of the house purchased by her late husband in 1993 and that they have remained in possession ever since. The plaintiff further testified that she has since taking possession of the property been paying all the outgoings in respect of land rent and rates to the Nairobi City Council. The plaintiff produced the documents contained in her bundle of documents in evidence among others the following:-

- i. Copy of agreement dated 6/2/1986
- ii. Copy of acknowledgement dated 5/3/1986
- iii. Copy of rates and land rent receipts
- iv. Copy of Limited grant of letters of Administration dated 10<sup>th</sup> March 1993 and copy of death certificate in respect of Samuel Njuguna Mburu dated 7/1/1993.
- v. Certificate of search dated 23/1/1998.

The Plaintiff testified that by the time her husband died in 1992 the property had not been transferred to his name. The Plaintiff further testified that she registered a caveat over the suit property to protect her interest. The witness attributed the delay in completing the transaction to her husband's sickness before he died. At the time the plaintiff moved in the house it was vacant and she stated they had to move out of the postal house allocated to her husband after his death and thus they decided to move into the property that her husband had purchased. The plaintiff moved to court after the defendant had sought to have them evicted from the house allegedly using a forged court order.

I have considered the evidence tendered by the plaintiff and I am satisfied that indeed the Defendant entered into an agreement to sell **L.R.NO. Nairobi/Block 76/156 Buruburu phase 3** to the plaintiff's husband one **Samuel Njuguna Mburu** (deceased) as per the agreement of sale dated 6/2/1986. The acknowledgement for payment of Kshs.200,000/- towards payment of the purchase price dated 5<sup>th</sup> March 1986 does not indicate there was any further balance outstanding towards the purchase price of Kshs.300,000/- and thus must have been the final balance of the purchase price. The agreement for sale was entered into on 6<sup>th</sup> February 1986 when part of the purchase price could have been paid. The penultimate sentence in the acknowledgement of 5<sup>th</sup> March 1986 reads as follows:- **"I will authorize respective authorities to effect transfer"**. There is no indication that the buyer was required to perform any further or other condition before the transfer was effected him.

The statement of defence filed by the defendant is a mere denial that there was a contract and/or that he received any money from the Plaintiff's late husband which on the face of the exhibited sale agreement and the acknowledgement of payment of money to him cannot stand. The contention that the plaintiff had no legal capacity to bring the suit also fails as the plaintiff has demonstrated she obtained grant of letters of administration (Limited) which enabled her to bring this suit on behalf of her deceased husband.

Upon evaluation of all the evidence and the documents placed before the court I am satisfied that the plaintiff has proved her case on a balance of probabilities against the Defendant and I enter judgment in favour of the plaintiff as against the Defendant and make the following orders:-

- a. That the Defendant be and is hereby ordered to execute the transfer of Title Number **NAIROBI BLOCK 76/156 Buruburu** in favour of the plaintiff and in default the Deputy Registrar of this Honourable court to execute the transfer documents in place of the plaintiff.
- b. That the Defendant do bear the costs of the suit.

Judgment dated and delivered at Nairobi this 6<sup>TH</sup> day of March 2014.

**J.M. MUTUNGI**

**JUDGE**

**In presence of:**

..... **PLAINTIFF**

.....**DEFENDANT**