



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND DIVISION**  
**ELC. NO. 93 OF 2012**

**PENINA WANJIRU NJANE.....PLAINTIFF**

**VERSUS**

**JOHN WAWERU MWORIA.....DEFENDANT**

**JUDGMENT**

The Plaintiff herein filed suit vide her Complaint dated 22<sup>nd</sup> February 2012 and filed on the same date wherein she sought for judgment to be entered against the Defendant as follows:

1. A permanent injunction restraining the Defendant by himself, his agents, servants and/or anybody else whomsoever acting on his behalf or claiming title from him from trespassing, continuing to trespass, or remaining on, further developing, transferring, alienating dealing and or in any other manner whatsoever from interfering with the Plaintiff's quiet user occupation, ownership and/or enjoyment of the suit land herein namely RUIRU EAST BLOCK 1/T.819 within Ruiru Municipality.
2. A mandatory injunction to issue against the Defendant ordering him to forthwith demolish, remove and/or pull down the house (s) and/or all other structures that he has illegally erected and/or build on the said parcel of land namely the suit land failure to which the Plaintiff be allowed to do so at her own expense and thereafter recover such expenses from the Defendant.
3. Costs of this suit
4. Any other alternative relief that this Honourable court may deem fit to grant.

The facts are that sometime in the early 1980s, the Plaintiff bought 100 shares in Githunguri Constituency Ranching Company Limited (hereinafter referred to as the "Company") for Kshs. 1,005/- and was issued with a share certificate no. 5629. The Company was a land buying company which would buy parcels of land and in turn subdivide and allocate the same to its shareholders. As a shareholder, the Plaintiff qualified for a plot and as such was allocated the suit land which was duly registered in her name. After the said allocation, she was issued with a title deed for her parcel which was the suit land. Ever since that time, she did not part with the same. However, in the beginning of the year 2010, she noticed that the Defendant had illegally encroached into the suit land and embarked on building a permanent house thereon. Upon her enquiring from him, he said that he was the legal and duly registered proprietor thereof having bought the same from a third party whom he declined to disclose. Upon noticing that the Defendant was adamant with his construction, the Plaintiff sought the services of the District Surveyor

who visited the site and confirmed that indeed, the Defendant was the owner of the plot neighboring the suit land, being RUIRU BLOCK 1/818 but that the Defendant mistook the actual location on the ground to be the suit land. The Defendant however refused to co-operate with the Plaintiff on correcting the anomaly leading to the filing of this suit by the Plaintiff.

Despite having been duly served with all the pleadings in this suit, the Defendant has not entered appearance or filed any defence as a consequence of which interlocutory judgment was entered against him and this suit proceeded for formal proof. During formal proof, the Plaintiff, who was the only witness, confirmed the facts set out above. The Plaintiff also produced the documents evidencing the purchase of the suit property which included a copy of the title deed to the suit land, a certificate of official search on the suit land dated 12<sup>th</sup> September 2011 and the District Surveyor's Report dated 7<sup>th</sup> April 2010, all of which went to show that the Plaintiff was indeed the registered proprietor of the suit land.

The issue for determination is whether the Plaintiff is entitled to exclusive possession of the suit land by means of a permanent injunction restraining the Defendant from dealing therewith in any manner whatsoever.

The law is very clear on the rights of a registered proprietor of a piece of land where they hold a valid title deed thereto and this may be found in section 24(a) of the Land Registration Act which provides as follows:

***“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”***

In addition, section 26(1) of the Land Registration Act provides as follows:

***“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner , ... and the title of that proprietor shall not be subject to challenge, except-***

- a. ***On the ground of fraud or misrepresentation to which the person is proved to be a party; or***
- b. ***Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

The Plaintiff is the holder of a valid title deed over the suit land. That title has not been challenged by the Defendant. According to the law cited above, the Plaintiff is therefore the absolute and indefeasible owner of the suit land and is entitled to enjoy all rights and privileges belonging or appurtenant thereto. One of those rights is the right of exclusive possession to the exclusion of all others including the Defendant. I am convinced that the Plaintiff has proved her ownership of the suit land and is entitled to the prayers she seeks.

Accordingly, I hereby enter judgment in favour of the Plaintiff as prayed and further award her the costs of this suit.

It is so ordered.

**SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>th</sup> DAY OF March 2014**

**MARY M. GITUMBI**

**JUDGE**