



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 141 OF 2011

BERNARD MBUGUA WAIRIMUPLAINTIFF

VERSUS

ESTHER NYATHIRA MUHIADEFENDANT

JUDGMENT

A suit was filed by the Plaintiff by his Plaint dated 30th March 2011 in which he sought for judgment against the Defendant as follows:-

- a. An order compelling the Defendant to tender vacant possession of the portion of land out of land parcel No. Ruiru/Ruiru East Block 2/958 (hereinafter referred to as the “Suit Property”) and in the alternative an order in favour of the Plaintiff to forcibly evict the Defendant from the Suit Property and the same be effected with the assistance of the Officer Commanding Station Ruiru Police Station.
- b. That the Plaintiff be granted costs of this Suit with interests thereof.
- c. Any other or further relief that this Honourable Court may deem just and fit to grant.

FACTS

The Plaintiff submitted that he is the registered proprietor of the parcel of land identified as RUIRU/RUIRU EAST BLOCK 2/958, which is the Suit Property, having been registered as such on 21/1/2011 by transmission pursuant to a Certificate of Confirmation of Grant issued in Succession Cause No. 515 of 2009 Estate of Susanah Wairimu Mbugua alias Susan Wairimu Mbugua alias Susana Wairimu Mbugua at Thika. He further submitted that the Defendant unlawfully and without any colour of right encroached on the Suit Property in a portion measuring approximately 40 by 80 feet and commenced construction of some permanent structures. He further submitted that despite demand and notice of intention to sue having been given by the Plaintiff to the Defendant, the Defendant adamantly failed to vacate the Suit Property thereby prompting the filing of this suit.

In his evidence, the Plaintiff produced his original title deed in respect of the Suit Property which was in his name. He further explained that before he was registered as proprietor of the Suit Property, the same was registered in the name of his mother. He further explained that during that time, an agent named Salome Njoki Nyoro purported to sell the portion of land to the Defendant at a cost of Ksh. 30,000/-. He explained that he had sought to refund the Defendant the sum of Ksh. 30,000/- she paid for the land but she refused to accept the money back. He stated that the Defendant refused to vacate the Suit Property.

Service of the Summons to Enter Appearance and the Plaint were duly served upon the Defendant but she failed to enter appearance or file a defence. As a result, Interlocutory Judgment was entered

against her on 23/6/2011 and the matter proceeded for formal proof.

LAW

Section 26 (1) of the Land Registration Act provides:-

“The Certificate of Title Issued by the Registrar upon registration or ...transmission by the proprietor 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...”

Further, Section 24(a) of the same statute provides as follows:

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

ANALYSIS

In this case, the Plaintiff produced in evidence his original Title Deed in respect of the Suit Property. As per the law cited above, this court is duty bound to take this to be prima facie evidence that the Plaintiff is indeed the absolute and indefeasible owner of the Suit property. Further to that, this court finds that the Plaintiff is entitled to exercise his full rights and privileges belonging or appurtenant to the Suit Property to the exclusion of all others, including the Defendant in this Case. Accordingly, this court finds that the Defendant has absolutely no rights over the Suit Property and should vacate or be evicted as prayed in the Plaintiff.

CONCLUSION

In conclusion, this court enters Judgment against the Defendant as prayed in the Plaintiff.

SIGNED AND DELIVERED AT NAIROBI ON THE 7TH

DAY OF JUNE 2013.

MARY M. GITUMBI

JUDGE