



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND DIVISION**  
**ELC. CASE NO. 245 OF 2012**

**JOYCE WAIRIMU KARANJA..... PLAINTIFF**

**VERSUS**

**EDWARD MURANGIRI MUGAMBI..... DEFENDANT**

**JUDGMENT**

The Plaintiff filed this suit by her Plaint dated 9<sup>th</sup> May 2012 praying for the following:

1. A Declaration that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of all that piece of land known as L. R. No. Kiambaa/Kihara/3199 (hereinafter referred to as the “suit property”) and that the Defendants whether by themselves or their servants or agents or otherwise howsoever are wrongfully in occupation of the suit property and are accordingly trespassers on the same.
2. A permanent injunction restraining the Defendants whether by themselves or their servants or agents or otherwise from accessing, cultivating, constructing or in any other way entering or remaining, continuing in occupation of the suit property.
3. A mandatory injunction compelling the Defendant, his servants assigns and/or agent to vacate the suit property.
4. General damages for wrongful occupation and denial of occupation and user.
5. Costs of this suit together with interest thereon.

The uncontested facts of this case are that the Defendant was an employee of Habib Bank Limited and took up the staff mortgage facility with Habib Bank Limited in the year 2000. As security for his mortgage, the Defendant gave his employer a mortgage over the suit property which at that time was registered in his name. However, 4 years later, the Defendant was dismissed from employment and he subsequently struggled to pay the loan until the year 2009 when he found a notice on his gate by Domicile Auctioneers indicating a sale of his property by way of public auction.

On the part of the Plaintiff, it was her testimony that she is the wife of Stanley Thaara Mugacha who purchased the suit property in her name at a public auction. She produced a copy of the title deed to the suit property and certificate of official search all which indicated that she is the registered proprietor of the suit property. She further disclosed that the purchase price was partly financed by the Kenya Commercial Bank which holds a charge over the suit property. She further stated that since the purchase of the suit property, neither she nor her husband have ever been able to gain possession thereof owing to the fact that the Defendant has never granted them vacant possession of the same hence this suit seeking

primarily to evict him out of the suit property.

The Plaintiff's husband, Stanley Thaara Mugacha, also testified and corroborated the evidence given by his wife. He confirmed that he is the one who bought the suit property from Habib Bank Limited when it exercised its statutory power of sale. He confirmed that he saw the auction advertised in the Standard Newspaper dated 5<sup>th</sup> November 2009. He confirmed that the auction was held on 16<sup>th</sup> November 2009. He testified having paid Domicile Services Kshs. 575,000/- being the deposit of 25% of the purchase price and that the remaining balance was financed by Kenya Commercial Bank Ltd which also took a charge on the property as security. Like his wife, Mr. Mugacha confirmed that since purchasing the suit property, neither he nor his wife have ever managed to get possession of the suit property as the Defendant refused to vacate the same hence this suit. He confirmed the prayers in the Plaint primarily that the Defendant be compelled to give them vacant possession of the suit property.

In his defense, the Defendant testified that the purported public auction did not take place because he obtained injunctive orders in a suit he filed in Kiambu addressed to Habib Bank and Domicile Services stopping the public auction.

The issues I need to determine arising from the above is whether the public auction was properly conducted, whether the Plaintiff has good title to the suit property and whether the Defendant has any good defence to the Plaintiff's title if any.

On the first issue, the Defendant claims that at the time the public auction was to be held, he obtained injunctive orders in a suit he filed in Kiambu against Habib Bank and Domicile Auctioneers stopping the public auction. An effort was made by the defense to produce the stated court order but the production of the same was successfully objected to by the Plaintiff. The result of this is that the Defendant's contention remains that, a mere claim which is unsupported by any evidence. That contention must therefore fail.

The other issue to determine is whether the Plaintiff got good title to the suit property through purchase of the same at the public auction. The Plaintiff produced a copy of her title deed to the suit property, a recent certificate of official search and a charge document in favour of Kenya Commercial Bank Ltd which financed part of the purchase price. 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 property. The Defendant did not challenge that title document on any of the grounds set out above. That being the case and according to the law cited above, the Plaintiff is therefore the absolute and indefeasible owner of the suit property 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 property.

On the third and final issue, so far as I can see, the Defendant has failed to show that he has any good defense to the Plaintiff's claim over the suit property. It is quite unfortunate that the suit property comprises his family home and that he was dismissed from employment but the law must be adhered to. I find that the Plaintiff has proved her case on a balance of probabilities and see no reason to deny her ownership rights over the suit property. I therefore enter judgment in her favour as prayed in the Plaint with costs. On the issue of damages, I award her the sum of Kshs. 100,000/- for each year that the Defendant stayed on the suit property since the purchase from 2009-2014.

**DELIVERED AND SIGNED AT NAIROBI THIS 2<sup>ND</sup>**

**DAY OF MAY 2014.**

**MARY M. GITUMBI**

**JUDGE**