



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL 231 OF 2012**

**DIANA AKINYI ODHIAMBO.....APPELLANT**

**VERSUS**

**CHARLES NJOROGE .....1<sup>ST</sup> RESPONDENT**

**JOYCE KABURA.....2<sup>ND</sup> RESPONDENT**

*(Being an appeal arising from the proceedings and judgment of Hon. R.A Oganyo SPM on behalf of Hon. Shadrack Okato SPM in Milimani CMCC No. 5041 of 2009 delivered on 12<sup>th</sup> April, 2012)*

**JUDGMENT**

The appellant was the defendant in proceedings conducted in the lower court involving a parcel of land known as Kayole Matopeni Squatters and Police Station Resettlement Scheme Plot No. B337. According to the record the appellant was served with summons to enter appearance through her brother in law one Douglas Odhiambo. However the appellant did not enter appearance or file any defence. The matter proceeded ex parte. An application to set aside the interlocutory judgment was heard and dismissed.

After the final judgment this appeal followed. In deciding for the respondents, the lower court addressed the history of possession of the said property by referring to an agreement between the respondents and one Patrick Muinde King'oo who sold the property to them. They took possession but at some stage the appellant went to the property and started working on it. The matter was reported to the chief who wrote to the appellant. That letter was produced in evidence.

The structure that was on the piece of land was demolished by the appellant who also took away the building stones. Photographs were produced showing the appellant on the piece of land. Mr. Patrick Muinde King'oo was called as a witness and supported the respondents' case. The lower court citing the case of **Amirali Hassanali Mohammed and another versus John Odero Nyangana Mombasa HCCC No. 265 of 2008** affirmed the respondents claim to the suit property, holding that the appellant had deliberately violated the respondents' rights. He awarded the respondents Kshs. 50,000/= as aggravated damages alongside prayers for injunction and vacant possession. I have looked at the grounds set out in the Memorandum of Appeal.

Both parties have filed submissions which I have noted. The issue of service of summons was addressed by the trial court when the appellant sought to set aside the interlocutory judgment. There was no appeal following that decision. It cannot be an issue for determination in this appeal.

There is nowhere in the judgment that the trial court stated that the title claimed by the respondents is the same as that claimed by the appellant. That observation in the memorandum of appeal is totally misplaced.

The court considered submissions by both parties. It is clear from the judgement where the court said,

**“I have considered the above evidence which was neither rebutted nor controverted and the same stands unchallenged. I have read the written submissions filed by both counsel and the authorities cited therein and annexed thereto.”**

There is no evidence of any bias whatsoever that can be discerned whether expressly or by implication in the said judgment. The draft defence that is on the record is a denial without any attempt to justify why the appellant claimed to be the owner of the property in dispute.

The lower court was seized of sufficient evidence to uphold the claim lodged by the respondents. The appellant had no right whatsoever over the said property going by the evidence presented by the respondents. The orders granted in favour of the respondents cannot be faulted. This appeal is therefore dismissed with costs to the respondents.

***Dated, signed and delivered at Nairobi this 17th day of May, 2018.***

**A. MBOGHOLI MSAGHA**

**JUDGE**