



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC No. 162 OF 2012

DOSHICOM DEVELOPERS LIMITED.....PLAINTIFF/APPLICANT

VERSUS

ABDALLA BAKARI & 41 OTHERS.....RESPONDENT/DEFENDANT

J U D G M E N T

1. The plaintiff Doshicom Developers Ltd sued forty two (42) defendants for the following orders:
 - a. *A declaration that the plaintiff as the registered owner of the suit property is entitled to access to, possession and enjoyment of the suit property Mombasa/Mainland South/block 1/1817.*
 - b. *An order for the eviction of the defendants from the suit property.*
 - c. *An order for the demolition of the illegal structures on the suit property*
 - d. *A permanent injunction to restrain the defendants whether by themselves, servants or agents or otherwise howsoever from entering upon, remaining on, carrying out any construction or activity or having any adverse dealing with the suit property.*
 - e. *The O.C.S Likoni police station to provide necessary assistance in enforcing orders (b) (c) and (d) herein.*
 - f. *Costs of and incidental to this suit.*
 - g. *Such other order or fur the orders as the justice of this case may necessitate.*
2. The defendants were served by way of substituted service following an order of the court issued on 14th October, 2013. Subsequent to this order an advertisement was placed by the plaintiff in the daily nation newspaper of 16th October, 2013 and a cutting of the said newspaper annexed to the affidavit of service was filed in court on 13th November, 2013 alongside the request for judgment. The defendants failed to enter appearance or to defend this suit therefore it was fixed for formal proof.
3. The case proceeded to formal proof on 16th April, 2015 with the plaintiff calling one witness P W 1 is Ashok Labhshanker Doshi who said he is a director with the plaintiff. The plaintiff is

- engaged in business of hardware and property development. His evidence is that property title No. MNS/BLOCK1/1817 belongs to the plaintiff and proceeded to produce a copy of lease document and certificate of lease in evidence. P W 1 continued that the plaintiff was in possession of and he had even built a wall around the suit premises.
4. P W 1's further evidence is that the defendants entered the plot and built up structures, some permanent others temporary upon which he made a complaint to the O C S Likoni on 14.5.2012 for the offence of trespass. The complaint was made via a letter which he also produced in evidence but the police did not respond. It is the plaintiff's case that they pay rates and rents as documented by the receipts filed in court. The people living on the land have demolished the walls. P W 1 concluded this case by saying the plaintiff has suffered loss as he had been denied access to use the land and he is the rightful owner. The plaintiff's manager had asked the defendants to move out to no avail thus necessitating this suit. He urged the court to grant the orders sought.
 5. The plaintiff has laid evidence before this court that he is the owner of the land in dispute by presenting certificate of lease and rates and rents receipts. It has also shown that before filing this suit he issued notice of complaint to the O C S to assist it access his land which complaint was not acted upon. The plaintiff's title has not been challenged by any of the defendants and therefore he is entitled to enjoy the use of this land as set out in section 247(b) of the Land Registration Act - which gives a proprietor *``leasehold interest described in that lease together with all implied and expressed right as and privileges belonging or appurtenant thereto subject only to implied or expressed agreements, liabilities or incidentals to the lease''*
 6. The title/certificate of lease shows the property is not encumbered. The defendants did not come to court to establish their interests if any. This court finds the plaintiff's case as established within the standard set in law. I find no reason not to grant the orders sought and consequently I do allow the orders contained in prayer (a) -(f) of the plaint as prayed.

Dated and delivered in open court at Mombasa this 16th day of June, 2015.

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JUDGE