



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ELC CIVIL SUIT NO. 7 OF 2011**

KARISA MRAMBA THOYA & 59 OTHERS.....PLAINTIFFS

-VERSUS-

AHMED SAID & 4 OTHERS.....DEFENDANTS

**JUDGEMENT**

1. The judgement is in respect of the defendant's counter – claim the plaintiff's suit having been dismissed. In the counter – claim the defendant prayed for the following orders :-

- i) Vacant possession
- ii) General Damages
- iii) Costs of the suit
- iv) Any other relief the honourable court deems just to grant.

2. On 2<sup>nd</sup> June 2015 when the matter was listed for hearing, the same was adjourned as Mr Okanga advocate said the plaintiffs were unaware of this date and it was in the interest of justice that they be made aware. The case was taken out of the hearing list of that day and fixed for hearing on 27.7.15. On 27.7.15, neither Mr Okanga nor the plaintiffs were present in Court. The case proceeded undefended.

3. The 1<sup>st</sup> defendant testified on behalf of his co- defendants. He adopted his statement he filed in Court on 10.9.2013. The witness testified that the suit plot No 667 is jointly owned between him and Khamis Said Rashid, Nassir, Rukia, Mansoor and Aziza (co-defendants). He produced a copy of the certificate of title in evidence. The 1<sup>st</sup> defendant confirmed that he knew the plaintiffs after this suit was filed and denied the plaintiffs have been in the land for 12 years.

4. The defendant testified further that the land belonged to their parents and later they inherited it. When they undertook valuation on it in 2005, it was reported vacant. He stated that when the plaintiffs came to the land, they began by harvesting sand. He reported them to the police and the plaintiffs were charged. He produced a copy of the charge sheet as Pex 3 and valuation report as Pex 4. Later the plaintiffs began building on the land and he produced photographs of the said houses as Pex 5. He asked for orders of vacant possession and compensation for damages and costs.

5. Mr Khatib advocate for the defendants did not submit. He said that he relied on the evidence and the earlier submissions. I have perused the record and the only submissions in the file are in respect of the interlocutory applications. On 30<sup>th</sup> September 2011, Okwengu J. (as she then was) granted the defendants orders of interlocutory injunction barring the plaintiffs from entering, occupying, constructing structures, removing soil or in any manner interfering with the suit property pending hearing of the suit. The defendants thus already obtained orders temporarily barring the plaintiffs from interfering with the suit land which should have kept the plaintiffs away. This Court at this stage is merely to confirm this orders if the defendants prove their case.

6. The defendants have shown a certificate of title proving they own the suit property. The plaintiffs only claim to the land was on the basis of adverse possession. That claim collapsed when their suit was dismissed. They never appealed the order of dismissal. Consequently I find no challenge to the defendants title to the land. In the absence of such challenge, the defendants are entitled to enjoy all rights conferred to a registered proprietor under Section 25 of the Land Registration Act. I am satisfied in the circumstances of this case that the defendants are entitled to orders of vacant possession and accordingly grant it to them as prayed in their counter – claim.

7. On the claim for general damages, no loss was proved to have been suffered as a result of the plaintiffs invasion. I will thus not award any to them. The plaintiffs invaded the defendants land and subsequently sued them. The defendants were thus forced to incur costs to defend their title and therefore they are entitled to be compensated. Consequently I award them costs of this suit.

**Judgement dated and delivered in Mombasa this 27th day of November 2015**

**A. OMOLLO**

**JUDGE**