



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

HCCC NO.108 OF 2010

1. DANIELE TERZI

2. ERICA LUGO.....PLAINTIFFS

=VERSUS=

FRED LWADE.....DEFENDANT

J U D G M E N T

1. The plaintiffs moved this court by way of a Complaint dated 26th August 2010 and filed on 14th September 2010.
2. In the complaint, the Plaintiffs are claiming for the following orders;
 - a. ***Vacant possession of the parcel of land known as plot number 2740 Malindi;***
 - b. ***Costs of this suit.***
3. The Plaintiffs have averred in their complaint that at all material times, they were the registered owners of all that piece of land known as plot number 2740 Malindi together with all the buildings and developments thereon by virtue of having purchased the same for valuable consideration.
4. The Plaintiffs have further averred that by a letter dated 14th July 2010, they gave the Defendant fifteen days notice to quit, deliver vacant possession of the suit property in which the defendant was a trespasser, which notice the defendant refused to abide with.
5. The Defendant was served with the summons to Enter Appearance and a complaint. He entered appearance through the firm of Antony Okuto and Company Advocates on 1st December 2010.
6. However on 22nd February 2013, the Defendant's advocate filed an application to cease acting for the Defendant which was served on the Defendant and was allowed by this court on 20th May 2013. On the same day, I granted the plaintiff leave to serve the Defendant with a hearing notice by way of advertisement in one newspaper of wide circulation.
7. The Defendant was served with a hearing notice for 27th June 2013 in the Daily Nation of 29th May 2013. The defendant was not present in court on 27th June 2013 when the matter was called. The matter did not proceed for hearing on that particular day and I adjourned it to 28th June 2013.
8. The 1st Plaintiff (PW1) informed the court that he came to Malindi in the year 2008 with his wife, the 2nd plaintiff. In 2009, him, together with 2nd plaintiff, identified a house in Malindi with the assistance of the estate agent. The house belonged to one Mirjam Sirbi.
9. PW1 testified that the Defendant was he husband of Mirjam Sirbi. The Defendant showed the plaintiffs the house and they agreed to buy it.
10. According to PW1, they were represented by the firm of Muli & Ole Kina Advocates in the purchase of the house. Their advocate did a search and confirmed that the house was registered in

- the name of Ms Mirjiam Sirbi.
11. It was the 1st Plaintiff's evidence that they purchased the price and the house was transferred to them. All along, the Defendant was good to them and in fact they had a party in the house to celebrate the purchase of the house.
 12. The 1st plaintiff produced the indenture between Mirjam Welhelmina Henrietta Sirbi and themselves dated 26th April 2010 and registered on 6th May 2010 as Plaintiffs exhibit 1.
 13. The 1st Plaintiff further testified that he paid the stamp duty of the transfer of the title to their names. The receipt for the payment of the stamp duty was produced as plaintiff exhibit number 2. the 1st plaintiff also produced the earlier conveyance between Ms Mirjam Sirbi and previous owners of the house as plaintiff exhibit number 3 a the receipt evidencing the payment of the rates to the Municipal Council of Malindi as plaintiff exhibit number 4.
 14. The 1st Defendant finalised his testimony by stating that him and his wife are the owners of the suit property. However, when he went to take possession of the house, the Defendant refused to hand over the house. By that time, the seller, Mirjam Sirbi had left for Europe.
 15. Consequently, the plaintiffs issued a demand letter to the Defendant demanding for vacant possession. The demand letter dated 28th June 2010 was produced as plaintiff exhibit number 5. The plaintiffs also produced as exhibit number 6 the certificate of Postal Search as on 24th August 2010.
 16. This matter proceeded in the absence of the Defendant.
 17. I have looked at the indenture dated 26th April 2010 between the Plaintiff and Mirjam Sirbi. According to the indenture the plaintiff bought portion number 2740 (original number 514/3a) Malindi for Euro Ninety Thousand (£90,000) and the vendor acknowledged receipt of the money.
 18. The suit property was subsequently registered in the name of the plaintiffs on 6th May 2010.
 19. Indeed, the search certificate as at 24th August 2010 shows that the plaintiffs are the registered owners of plot number 2740. they have been paying the land rates to the Municipal Council since then.
 20. The Plaintiffs evidence was not controverted. In the circumstances, and on the basis of the plaintiffs' evidence, I find and hold that the plaintiffs have established their case on a balance of probability. The defendant does not have any proprietary interests in the property known in law.
 21. I therefore allow the plaint dated 14th September 2010 as prayed.

Dated and Delivered in Malindi this 31st day of **July**, 2013

O. A. Angote

Judge