



COPY

REPUBLIC OF KENYA
INTHE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 191 OF 2012

BROLIA MBUKA OMBAJOPLAINTIFF

- VERSUS -

JONATHAN KOMBE DAVID DEFENDANT

JUDGMENT

[1] The plaintiffs' claim against the defendant is for an order of eviction against the defendant, his agents and or servants from the piece of land known as **Majaoni/Block/5A/297**. He also prays for a permanent injunction to restrain the defendant, his agents and/or servants from trespassing into plaintiff's piece of land aforesaid and to demolish all structures erected in the suit land and payment of damages for trespass on the land.

[2] During the hearing the plaintiff produced a sale agreement between himself and one Karisa Yaa Yeri dated 22nd April 1992 an application for consent of Bahari Land Control Board dated 20th July, 1992, a letter of consent dated 30th July 1992 by Bahari Land Control Board, receipt for registration and survey and a transfer of land dated 23rd July 1993 duly stamped. He annexed a title for Majaoni/Block 5A/297 for 2.4. hectares in his name marked as Exh. 8. and finally a demand letter from his advocates Asige Kaverenge and Anyanzwa asking the defendant to move out of his land. He said that he visited his land in October 2010 and found the defendant on his land and an extra building having been added to the one he had himself built. That the defendant claimed that the land was his own. He denied ever selling the land to the defendant. He denied ever giving the defendant permission to enter his land. He reported the matter to the Chief who asked the defendant to move out of the said land. That after he failed to move out and vacate his land he asked his lawyer to write to the defendant to move out and vacate the land. He never did so, making this suit necessary.

[3] The defendant said that the said Karisa Yaa Yeri was his father. He said he and his father was sued by one Grace. That, Grace was complaining that the land should be subdivided into half. That what remained after six acres was sold to the plaintiff was small. Under Cross-examination he said that the land was sold by his father. He said he was there when survey was done. He admitted that in the land there was a worker. He admitted that the plaintiff had built a small house and that it was pulled down by the wind. He admitted he was taken to the police station by the plaintiff. He admitted that his step father

Eric Samwel Yaa was an OCS and he gave evidence in the tribunal and helped the defendant from being charged by the police.

The defendant produced documents to show that there were proceedings in the now defunct land disputes tribunal held at D.O's office on 26th November 2002. Where one Grace Kombe had filed a complaint that her father in law Karisa Yaa Yeri had sold the land without her consent.

[4] The proceedings in the tribunal seemed to say the land sold should be returned but made no provisions for refund of purchase price. A confirmation by the Kilifi Senior Magistrate's Court was annexed and an appeal to the Provincial Appeal Tribunal was annexed. That is the brief history of this case.

Needless to say that the decision by the Bahari Division Land Dispute Tribunal held on 26th November 2002 was null and void. The tribunal had no jurisdiction to determine title to land. There are several authorities on this point. The Act that established the tribunals did not give them such powers. The orders of the tribunal were a nullity. Any attempt to have these orders ratified and/or confirmed by the Kilifi Senior Resident Magistrate's Court was an exercise in futility. The appeal pending in the Provincial Land Appeals Tribunal is now overtaken by events. The said tribunals have been abolished by law. In any case, there would have been no valid decision before the Appeals tribunal capable of any appeal.

[5] The plaintiff is the registered owner of the suit land. He acquired it through the laid down procedure. His title cannot be defeated by the purported decision by the Bahari Land Disputes Tribunal at all. The plaintiff has proved that he is the owner of Majaoni/Block/5A/297. He is entitled to quiet possession of the same. He is entitled to the order he seeks in his plaint. I grant it to him with costs.

Dated and delivered in open Court at Mombasa this 23rd day of August, 2013.

S.N. MUKUNYA

JUDGE

In the presence of:

Ms. Mango holding brief for Asige for the plaintiff

Mr. Mutiysa holding brief for Bosire for the respondent