



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 658 of 2011

DEEPAK ASHWINKUMAR MARU.....PLAINTIFF

VERSUS

RAHEMAT ESSA DOSANI.....1ST DEFENDANT

BENSON OKUMBI.....2ND DEFENDANT

JUDGMENT

The plaintiff in this suit, **Deepak Ashwinkumar Maru** filed suit against the Defendants namely; **Rahemat Essa Dosani** 1st defendant and **Benson Okumbi** the 2nd defendant. The plaintiff seeks the following orders against the defendants;

- a) Vacant possession of the property land ref. No. 209/3345;
- b) Permanent injunction restraining the Defendants, their servants or agents from dealing with the suit property Land Ref No. 209/3345 and interfering with the Plaintiff's peaceful occupation of the same.
- c) Mesne profits;
- d) Costs of the suit;
- e) Any other further or other relief the Honourable Court may deem fit and just to grant.

According to the plaint the plaintiff is the registered proprietor of **land ref. No. 209/3345** (hereinafter referred to as the suit land), together with **Bharat I Maru** as tenants in common. It is pleaded that the plaintiff is also the holder of a special power of attorney no. P/A no. 49181/1 donated by **Bharat I Maru** allowing the Plaintiff to deal with her share of the property. According to the plaintiff the plaintiff is also the holder of a general power of attorney no. P/A 5091 donated by **Labhuben Isharwalal Maru**. The defendants, it is contended are illegally and without any colour of right residing in the suit premises, having trespassed onto the suit land thus denying the plaintiff peaceful and quiet settlement and use of the suit land. In the plaintiff's view the Defendants claim to be tenants in the suit property from February 2008 vide a false tenancy agreement allegedly between them and **Labhuben Isharwalal** who is not a registered owner of the suit property and thus has no right over the property and cannot therefore lease, rent or give authority to anyone to deal with the property. It is contended that the Defendants also carry out business on the premise without the Plaintiff's consent, have also let out part of the property to third parties, and have introduced criminal elements to the premises and illegally bred dogs.

The suit was heard before **Khaminwa, J** on 12th June 2012 at which hearing only the plaintiff testified. This judgement is written pursuant to the provisions of Order 18 rule 8 of the Civil Procedure Rules. In his evidence the plaintiff averred that he is a retail businessman in Nairobi and has sued the Defendants as they reside on his property L.R. 209/3345, 4th Avenue, Parklands which is registered in his name and that of **Bharat I. Maru**. He then produced the title as Exhibit 1. He maintained that the entry number 26 in the title, the 1/2 share of **Dinesh I. Maru** has been transferred to his name. He insisted that he also holds a power of attorney registered in his favour by **Bharat Isharwalal Maru** while the other one is donated by his grandmother who does not reside on the property. It was his evidence that he was a beneficiary of his deceased uncle who passed away leaving the property and whose estate he applied for a grant of administration, which grant was later confirmed. The certificate of confirmation of grant was produced as Exhibit 4. He added that the Defendants who are in occupation have denied him the same as they claim interest on the property as employees and tenants of his said grandmother yet they do not pay any rent. Though served with the suit papers, the defendants have not responded. He, consequently, seeks possession, injunction, mesne profits and costs. He also drew attention of the court to the letter by his grandmother to the Advocates purporting to act for her denying the allegations and allowing the Plaintiff to take possession of the property.

I have considered the evidence on record. The plaintiff's case is that he is the registered proprietor of land **LR No. 209/3345 4th Avenue Parklands** together with **Bharat I. Maru** who has donated a Power of Attorney in his favour. He has produced the title documents as well as the Power of Attorney. He has gone further to produce a general Power of Attorney donated to him by his grandmother, **Labhuben Isharwalal Maru**. His evidence that the defendants are in unlawful occupation of the suit property as trespassers and are collecting rent from third parties who are occupying part of the property has not been challenged by the defendants and hence not controverted by the defendants.

In the case of **Karuru Munyororo vs. Joseph Ndumia Murage & Another Nyeri HCCC No. 95 of 1988 Makhandia, J** (as he then was) held:

“The plaintiff proved on a balance of probability that she was entitled to the orders sought in the plaint and in the absence of the defendants and or their counsel to cross-examine her on the evidence, the plaintiff's evidence remained unchallenged and uncontroverted. It was thus credible and it is the kind of evidence that a court of law should be able to act upon”.

The defendants therefore have no right in light of the evidence to occupy the suit premises. The uncontroverted evidence tendered by the Plaintiff and particularly the documentary evidence comprised in the various exhibits tendered herein by the plaintiff conclusively establish that the suit property belongs to the Plaintiff. He is therefore entitled to immediate and exclusive possession of the suit property. The defendants have deliberately violated the plaintiff's said right. The plaintiffs are therefore on a balance of probabilities entitled to the prayers sought. For those reasons, judgment is hereby entered in favour of the plaintiff against the defendants for vacant possession. However, the plaintiff has not led any evidence on the basis of which the Court would be able to assess the mesne profits. Without such evidence the Court is unable to award the same. As was held in **Idi Ayub Omari Shabani & Another vs. City Council of Nairobi & Another Civil Appeal No. 52 of 1984 [1985] 1 KAR 681:**

“Plaintiffs must understand that if they bring actions for damages it is for them to prove the damage and it is not enough to write down the particulars and, so to speak, throw them at the head of the court, saying, this is what I have lost, I ask you to give me these damages. They have to prove it”.

Accordingly the orders that commend themselves to me and which I hereby grants are:

- 1. An order directed to the defendants to vacate the suit premises and give vacant possession to the plaintiff the property land ref. No. 209/3345 within 30 days and in default eviction order to issue.**
- 2. Permanent injunction restraining the Defendants, their servants or agents from dealing with the suit property Land Ref No. 209/3345 and interfering with the Plaintiff's peaceful occupation of the**

same.

3. The plaintiff will also have the costs of this suit to be borne by the defendants.

Dated at Nairobi this 17th day of December 2012

**G V ODUNGA
JUDGE**

Delivered in the presence **Mr. Ochola** for the Plaintiff