



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 355 OF 2008

SASENYI MULTIPURPOSE CO-OPERATIVE SOCIETY LTDPLAINTIFF

VERSUS

ROBERT NDEKA

RUMBA LEWA

DAVID CHILOLWA MAGONZI

MWANGOME SAIDI

**ROMAN MJOMBA and other defaulters currently in occupation of Land Reference
No. 12263/2. CR.15284 West of Mackinnon Road TownDEFENDANTS**

J U D G M E N T

The plaintiff, a Co-operative Society registered under Co-operative Societies Act filed this suit on 19th December 2008 against some of its members, the Defendants herein, namely:-

1. Robert Ndeka
2. Rumba Lewa
3. David Chilolwa Magonza
4. Mwangome Said and
5. Roman Mjomba

The plaintiff seek the following orders against the Defendants:-

(a) A permanent injunction to issue restraining the Defendants either by themselves, their servants, agents, employees, nominees, and/or whomsoever, acting on their behalf from cutting down trees, filling, excavating, prosecuting, farming, constructing, letting out, selling, offering for sale and/or in any other manner dealing with all that panel of land more specifically known as Land Reference Number 12263/2, West Mackinnon Road Town.

(b) A mandatory injunction to issue against the Defendants compelling them either by themselves, their servants, agents, employees and/or whosoever acting on their respective behalf to demolish all the illegal structures standing in Land Reference No. 1226/2 West of Mackinnon Road forthwith vacate the plaintiff's said land.

- (c) A declaration that the Defendants are in breach of the Society's By-laws and have thus ceased to be members.
- (d) General Damages for Trespass and mesne profits.
- (e) Costs of and incidents to this suit.
- (f) Any further relief that this Honourable court deems fit and just to grant.

Upon summons being issued, the plaintiff served the 5 defendants on 6th April, 2009 with the summonses and plaint through a process server, George M. Mwakazi, who filed his affidavit of service sworn on 24th April, 2009.

On 29th April, 2009 the court entered interlocutory judgment for non-appearance of the Defendants herein.

The hearing of the suit was fixed and the matter proceeded before the Honourable Justice Njagi on 21st May 2009. The Chairman of the Plaintiff society Mr. Richard Fabian Tole testified on oath. He produced the certificate of Registration of the Plaintiff Society. It was registered owner of the suit property Land Reference No. 12263, (Cert. No CR 15284). He testified that the Defendants had entrance fees of Kshs.100 each but they did not fully pay for their shares which was to be issued to them. He produced a copy of the by-laws of the Society. The shares were going for Shs.16,000/- per member. Initially it was going for Shs.9,000/- later increased to Shs.12,000/- per member and at the hearing it had been increased to Shs.16,000/-.

The land of the society is 5,000 acres which is part of the Rukanga Farm.

P.W.1 testified that on numerous occasions the plaintiff issued notices to its members to comply with the society's By-laws by subscribing for shares and that the Defendants have breached the society's by-laws.

P.W. 1 added that the Defendants have refused to vacate portions of the land for which they never paid any consideration.

The plaintiffs suit is undefended. On a balance of probabilities, the plaintiff have proved their claim as against the 5 Defendants.

I do hereby enter judgment for the plaintiff against the 5 defendants as prayed in prayers (a), (b), (c) (d) and (e) of the plaint dated 19.12.2008.

The plaintiff did not lead any specific evidence to assist the court assess the general damages or mesne profits. As a result, I do hereby award a nominal sum of Kshs.100,000/- as general damages for trespass. The Defendant shall pay the costs to the plaintiff.

Orders accordingly.

Dated and delivered at Mombasa this 27th day of January 2011.

M. K. IBRAHIM
J U D G E