

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Suit 265 of 2008

AMIRALI HASSANALI MOHAMMED.....1ST PLAINTIFF

ZARINA AMIRALI HASSANALI MOHAMMED.....2ND PLAINTIFF

VERSUS

JOHN ODERO NYANGANGA.....DEFENDANT

JUDGMENT

The plaintiffs seek a declaration that the defendant by himself or his servants or agents or otherwise howsoever is wrongfully in occupation of Parcel No. Mombasa/Block V/Mainland South/133 (hereinafter "*the suit property*") and is accordingly a trespasser thereon and therefore not entitled to remain on the suit property. The plaintiffs further seek vacant possession of the suit property and an injunction restraining the defendant by himself or his servants or agents or otherwise howsoever from remaining or continuing in excavation and construction on the suit property.

The defendant has not entered appearance or filed defence. The suit therefore proceeded ex-parte. The plaintiff's evidence was adduced by the 1st plaintiff. He testified that he and his wife, the 2nd plaintiff, are the registered proprietors of the suit property having purchased the same from Gharib Abdulla Mohamed in February 1989 at the consideration of Kshs. 150,000/=. He produced the Title Deed for the suit property and a copy of the transfer which was duly registered on 13th February 1989 as P.EX. 1 and 2. He also produced a Certificate of Official Search in respect of the suit property as PEX 3.

The 1st plaintiff further testified that he has been regularly paying the local council rates since 1993. He produced the latest demand for rates and a receipt issued for the payment thereof as PEX 4(a) and (b). Notwithstanding that the plaintiffs are the registered proprietors of the suit property, the defendant is carrying out construction on the same. He produced a photograph showing the said construction as PEX 5. He testified that neither him nor his wife have permitted the defendant to enter the suit property and carry on the said construction and the defendant has no reason for being on the suit property.

On the basis of that testimony, the plaintiffs prayed for the reliefs sought in the plaint.

Having carefully considered this matter, I am satisfied that the uncontroverted evidence tendered by the plaintiffs and particularly the documentary evidence comprised in the various exhibits tendered herein by the plaintiffs conclusively establish that the suit property belongs to the plaintiffs. They are therefore entitled to immediate and exclusive possession of the suit property. The defendant has deliberately violated the plaintiffs said right. The plaintiffs are therefore on a balance of probabilities entitled to the prayers sought in the plaint. For those reasons judgment is hereby entered in favour of the plaintiffs against the defendant as prayed with costs.

Orders accordingly.

D ATED AND DELIVERED AT MOMBASA THIS 22ND DAY OF APRIL 2010.

F. AZANGALALA

JUDGE

Read in the presence of:-

Mutungu holding brief for Ndegwa for the plaintiffs.

F. AZANGALALA

JUDGE

22ND APRIL 2010