



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Case 392 of 2009

AMOS WAMUNYU PLAINTIFF

VERSUS

NYAE KADUNGO NYAE & 16 OTHERS DEFENDANTS

JUDGEMENT

By this plaint filed in court on 10th November 2009 the Plaintiff **AMOS WAMUNYU** seeks inter alia the following orders

- ”(a) A declaration that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of the suit property.**
- (b) A declaration that the Defendants whether by themselves, or their servants or agents or otherwise howsoever, are not entitled to remain on the suit property.**
- (d) A permanent injunction restraining the Defendants, whether by themselves or their servants or agents howsoever from remaining on or continuing in occupation of the suit property.**
- (e) Vacant possession of the suit property.**
- (f) General damages for trespass**
- (g) Costs of this suit together with interest therein at such rate and for such period of time as this Honourable Court may deem fit to grant.**
- (h) Any such order that this Honourable court may deem appropriate”**

The Defendants **NYAE KADUNGO NYAE** and sixteen others were each duly served with notices to enter appearance but all failed to comply within the specified time. On 10th March 2010 the court entered interlocutory judgement as against all seventeen (17) Defendants. The matter came up before me for formal proof on 26th April 2010.

The Plaintiff told the court in his evidence that he is the registered proprietor of all that piece of land known as **KWALE/KIWEGU/JEGO/47** measuring approximately 162.0 hectares located in Kwale District, Coast

Province(hereinafter referred to as the '**suit property**'). The Plaintiff avails to court the Title Deed for the suit property as an exhibit to prove his ownership of the same **Pexb1**. He states that in the year 2006 the 17 Defendants illegally entered the suit property and began to live thereon. The Plaintiff's attempts to get the Defendants to leave were futile as they turned hostile. He has therefore been deprived of quiet enjoyment of his property leading him to file this present suit. He now asks for eviction orders to compel the 17 Defendants to leave the land.

As stated earlier this matter came up merely for formal proof. The 17 Defendants had failed to either enter appearance or file their defences within the required time and thus interlocutory judgement was entered against them. The Plaintiff has satisfied this court that he is the legal and bona fide proprietor of the suit property. The Title Deed availed in court clearly indicates that he is the registered proprietor. The Defendants invaded the suit property without the authority or consent of the Plaintiff. His efforts to get them to leave turned to nought. I am satisfied that the Plaintiff herein has proved his claim on a balance of probability. This suit succeeds and I do grant prayers (a), (b), (d) and (e) of the same. The Plaintiff made a claim for general damages for trespass but he did not advance this claim in his evidence. I therefore decline to grant any orders on this prayer (f). costs are awarded to the Plaintiff.

Dated and Delivered at Mombasa this 26th day of May 2010.

M. ODERO

JUDGE

Read in open court in the presence of:

Mr. Oduor holding brief for Mr. Kanyi for Plaintiff

No appearance by Defendants

M. ODERO

JUDGE

26/05/2010