



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 261 of 2007

HOMACC LIMITEDPLAINTIFF

VERSUS

S. AJODE1ST DEFENDANT

JENIFFER ANYANGO.....2ND DEFENDANT

DEVIDO J.3RD DEFENDANT

ROGER MWAWALAA.....4TH DEFENDANT

MUSA R.5TH DEFENDANT

SEIF ABDALLA6TH DEFENDANT

HUSSEIN ALI7TH DEFENDANT

SALIM H.8TH DEFENDANT

MWALUDA C.9TH DEFENDANT

DISCKSON KAHINDI10TH DEFENDANT

KENGO C.11TH DEFENDANT

H.W. NYAWA12TH DEFENDANT

KARISA H.13TH DEFENDANT

DAMARIS AKINYI14TH DEFENDANT

NYAMAWI JOSEPH.....15TH DEFENDANT

EDWARD WENDA16TH DEFENDANT

JACKSON KILONZO.....17TH DEFENDANT

REGAO JONATHAN18TH DEFENDANT

RASHID ISSA	19 TH DEFENDANT
HAMISI MWANAISHA	20 TH DEFENDANT
TOLE B.	21 ST DEFENDANT
MZEE RASHID	22 ND DEFENDANT
MANGANGA K.	23 RD DEFENDANT

J U D G M E N T

By a plaint dated 20th July 2007, Homacc Ltd, the plaintiff herein, sought for judgment as follows:

- a) Vacant possession of the suit property and/or the Defendant be evicted from the said parcel of land being L.R. No.MN/VI/3648 Miritini, within Mombasa by the Kenya Police – Mombasa, and more particularly the Provincial Police Officer and the District Officer, Miritini**
- b) General damages for trespass**
- c) Costs of this suit together with interest thereon at such rate and for such period of time as this honourable court may deem fit to grant.**
- d) Any such other or further relief as this honourable court may deem appropriate.**

against S. Ajode, Jenniffer Anyango, Devido J., Roger Mwawalaa, Musa R. Seif Abdalla , Hussein Ali, Salim H., Mwaluda C, Diskson Kahindi, Kengo C., H.W. Nyawa, Karisa H., Damaris Akinyi, Nyamawi Joseph, Edward Wenda, Jackson Kilonzo, Regao Jonathan, Rashid Issa, Hamisi Mwanaisha, Tole B, Mzee Rashid and Manganga K, being the 1st to 23rd defendants herein. The summonses were served upon the defendants by substituted service pursuant to this court’s leave of 7th December 2007. Entry of judgment in default of appearance was made on 19.03.08. This suit therefore for hearing exparte as a formal proof.

When the suit came up for hearing, the plaintiff tendered the evidence of a single witness before closing its case. Ashok Doshi (P.W.1) informed this court that he was a Director with the plaintiff company. He produced the certificate of title as an exhibit in evidence in respect of L.R.No. MN/VI.3648 hereinafter referred to as the suit land to prove that Homacc Ltd is the registered proprietor of aforesaid parcel of land. The certificate of title was issued pursuant to the provisions of the Registration of Titles Act on the 23rd day of September 1988. The parcel of land is approximately 1.756 hectares. The leasehold is for a term of 99 years with effect from the 1st day of January 1988. P.W.1 complained that the defendants entered the plaintiff’s parcel of land without its consent. He stated that the plaintiff company engaged the services of Makuri Enterprises to investigate the identities and the number of the trespassers. He produced in evidence as an exhibit a report prepared by the aforesaid firm which contained the names of persons who have trespassed into the plaintiff’s land. The report is dated 7.6.2007. All the defendants are named in that report as having occupied by putting up both temporary and permanent structures on the suit land. The witness asked this court to order the defendants to be evicted from the suit land. P.W.1 said that the squatters refused to vacate despite having been requested to do so through the area District officer. The plaintiff instructed their advocate to issue a demand notice asking the defendants to vacate the suit premises. The plaintiff filed this suit when the defendants failed to meet the plaintiffs demand. The plaintiff has also asked for costs.

Mr. Omulele, learned counsel for the plaintiff made brief oral submissions. He urged this court to grant judgment as prayed in the plaint because the plaintiff has established ownership of the suit premises and trespass on the part of the defendants.

I have considered the evidence tendered by the plaintiff’s only witness. I have also taken into account the submissions of learned counsel. The issues which have boldly come out are: One, whether the plaintiff has established proprietary interest over the suit land. Two, whether the plaintiff has established that the defendants have interfered with his proprietary rights. Three, whether the plaintiff is entitled to the prayers sought in the plaint.

Let me begin with the first issue. I have carefully examined the certificate of title produced in evidence by the plaintiff’s witness as an exhibit. The same was issued on 23rd September 1988 under the provisions of the Registration

of Titles Act. It is in respect of a lease for 99 years with effect from 1st September 1988. No one has come forward to challenge title. The plaintiff in my view has established that he has proprietary interest over the suit land over everybody else.

Having disposed of the first issue let me consider the second issue as to whether the plaintiff has proved that the defendants have interfered with its proprietary rights. Through the evidence of P.W.1 the plaintiff has stated that the defendants moved onto the suit premises in the year 2000 whereupon they put up both permanent and temporary structures. It is also alleged that the defendants have occupied the land without the plaintiff's consent. It is also claimed that the defendants have refused to vacate the suit land despite requests and demands being made to them. These allegations have not been challenged by the defendants. The acts complained of are acts which go against the rights of the property owner. I am convinced that the plaintiff has proved that the defendants have acted contrary to its rights as the registered proprietor of L.R. No. MN/VI/3648.

The last issue is whether the plaintiff is entitled to the prayers it sought in the plaint. I have already said that the title to the suit land was issued pursuant to the provisions of the Registration of Titles Act. Section 23 (1) of the Registration of titles Act reads as follows:

“S.23 (1). The certificate of title issued by the Registrar to a purchaser of land upon a transfer of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances easements, restrictions and conditions contained therein or encloned thereon, and the title of that proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to be a party.”

It is abundantly clear that the plaintiff is entitled to the prayers sought in the plaint. The squatters must give vacant possession in favour of a proprietor of a legally acquired title. Courts will always approve the sanctity of title in accordance with the law stated in the statute. The court of Appeal in **Maharus –vs- J.B. Martin Glass Industries & 3 others [2005] Vol.2 K.L.R. page 289** held inter alia:

“That High Court was right in affirming the sanctity of title under S.23 of the Registration of Titles Act except on the ground of fraud or misrepresentation.”

In the end I am satisfied that the plaintiff proved its case on a balance of probabilities. The plaintiff did not establish the prayer for general damages for trespass hence I will not give it the order. It has however proved that it is entitled to the other prayers. I enter judgment as sought in terms of prayers (a) and (c) of the plaint.

Dated and delivered at Mombasa this 28th day of May 2009.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Oloo h/b Omulele for plaintiff.