



ALI MOHAMED MWINZAGU (Suing as the administrator of the estate of
ABDULRAHMAN NASSIB ALI)**PLAINTIFF**

VERSUS

1. DAVID KARISA TSUI

2. KAHINDI KARISA TSUI

3. KALUMA CHARO KARISA**DEFENDANTS**

J U D G M E N T

The plaintiff instituted this suit on 7th July 2008 in his capacity as the Administrator of the Estate of the Late Abdulrahman Nassib Ali. He produced the original grant issued to him by this court on 23.08.07 and subsequently confirmed.

The Estate claims that the deceased was at all material times the registered proprietor of all that parcel of land known as Plot No. 428 Sec. I, Mainland North registered at Title Registry as C.R. 8925/1. That three Defendants have without any lawful cause and illegally trespassed on the deceased's parcel of land and made construction of temporary structures, and shades and are continuing with such constructions.

The plaintiff seeks the following reliefs:-

- 1) *A declaration that the Defendants are trespassing on parcel of land known as Plot No. 428 Sec. 1 Mainland North, registered as No. C.R. 8026/1.*
- 2) *An injunction restraining the Defendants from constructing on the parcel of land alienating the same or in any other way or manner whatsoever working on the parcel of land by themselves, their servants and/or any agent working under their authority.*
- 3) *An order in the nature of a Mandatory Injunction compelling the Defendants to deliver vacant possession to the plaintiff.*
- 4) *General damages.*
- 5) *Costs of this suit and interest at Court rates.*

The Defendants filed a defence in which they denied the

plaintiff's claim of trespass. They averred that they are law abiding people and the construction of the structures are legal. They claim that they have been on the land peacefully and have had lawful occupation to over 10 years. They seek the suit to be dismissed.

The Administrator of the Estate testified on behalf of the plaintiff Estate and produced the Certificate of title to the property. The defendant did not attend court and did not call any witnesses. They were duly represented by their Advocate Mr. Stephen Oddiaga.

Upon considering the pleadings and evidence, I do find that the plaintiff is the lawful and legal registered owner of the suit property. The defendants trespassed on the land and are illegally in occupation of the said property. They have not claimed any legal or equitable in right or interest. They did not file any counterclaim and were not in court when it was called out for hearing. I do find that the defendants' defence is general and a mere slam. The defendants are law breakers and cannot claim to be law abiding citizens. Law abiding people do not take the law into their hands and use brute force to enter or occupy and construct on other peoples land or property.

The record shows that this court granted interim injunctive orders against the Defendants but the same were disobeyed by the Defendants. I do find that the Defendants are trespassers on the land without any title or colour of any right.

The plaintiff as the owner of land is entitled to enjoy the use of its land without any interference from the defendants or any other person. The Defendants and those persons they have allowed onto the land must vacate the land as their illegal presence thereon infringes on the plaintiff's propriety rights which are protected by the constitution of Kenya.

It is high time the defendants learnt that there is Rule of Law in Kenya and they shall not be allowed to take property by force. They have to work to acquire their own. Their exploitation of the plaintiff is unconscionable and shall not be countenanced by the law and the court. I therefore enter judgment for the plaintiff in terms of prayer 1, 2 and 3.

The plaintiff did not lead evidence to prove the exact extent of damage and loss suffered due to the trespass. However since trespass has been proven and this court must punish the defendants for the same the court awards a nominal sum of Kshs.100,000/- against the defendants jointly and severally. In assessing this I have taken into account the length of time of the trespass and the outright obstinacy and arrogance of the Defendants. The Defendants shall pay the cost of this suit to the plaintiff.

In order to make the orders of this court effectual and considering the contemptuous conduct of the defendants, I do here by exercise this court's inherent jurisdiction and direct the officer in charge of the nearest Police Station to the suit property to enforce the eviction of the defendants from the suit property upon being served with the orders herein.

Dated and delivered at Mombasa this 30th day of October 2009.

M. K. IBRAHIM

J U D G E

Coram:

Ibrahim, J

Court clerk – Kazungu

Ms. Abdul for Mr. Oddiaga for the plaintiff

No appearance for Mr. Katete

Judgment delivered in their presence.

IBRAHIM, J