



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA Civil Case 155 of 2006

ALI MOHAMED ALI MWINZANGU PLAINTIFF

VERSUS

1. **KAINGU MANGI 1ST DEFENDANT**
2. **SAFARI KAHINDI 2ND DEFENDANT**
3. **ABDULRAMAN Alias AMIGO 3RD DEFENDANT**
4. **SHABAN 4TH DEFENDANT**
5. **MOHAMED 5TH DEFENDANT**
6. **OMAR & OTHERS 6TH DEFENDANT**

JUDGEMENT

The Plaintiff ALI MOHAMED ALI MWINGANGU filed this amended plaint dated 30th July 2009 by which he sought the following orders as against the Defendants –

“(a) A permanent injunction to restrain each of the Defendants herein and other persons by themselves and/or their families nominees or whomever from entering into and/or remaining upon the suit property namely 70/182 share thereof of PLOT NO. 966 [original No. 205/2] Section 1, Mainland North and/or committing any acts of trespass and/or wastage howsoever thereon

(b)An order as against the Defendants and those bound by the Decree arising herefrom for the demolition of all the structures illegally erected and standing on/upon the suit property and delivery of vacant possession to the Plaintiff and in default the Court Bailiff do effect the demolition and do place the Plaintiff into possession of the suit property under the supervision of the O.C.S. Bambini Police Station.

(c) Damages for trespass and loss resultant therefrom

(d)Costs of this suit and interest thereon and those of (b) above at court rates”

The original owner of the suit property was the late AHMED MOHAMED NASSIB. This is clearly evidenced by the Title Deed exhibited as MAM I. Grant

of letters of Administrations with respect to the estate of the late Ahmed Mohamed Nassib were issued to the Plaintiff herein as per Pexb 1 on 15th November 2005. As such I do find that the Plaintiff has locus and is entitled to file this suit in order to protect and consolidate the estate of the deceased.

In his suit papers the Plaintiff alleges that on or about 7th July 2006 the six Defendants together with others not named in the suit illegally entered onto the suit premises and began to parcel it out to themselves. The Plaintiff reported this act of trespass to Bamburi Police Station but the Defendants have remained put.

The amended plaint as well as the hearing notice were properly served upon the Defendants as evidenced by the affidavit of service sworn by BENSON OMONDI on 30th September 2009. Not one of the Defendants entered appearance, filed defence or appeared in court on the hearing date to defend the suit. The hearing therefore proceeded in their absence.

It is quite clear that the Plaintiff is the beneficial owner of the suit property by virtue of the letters of administration which he holds with respect to the deceased. The Plaintiff in his evidence states that the Defendant entered onto the suit premises sometimes in July 2006 and claimed to be the legal owner by virtue of absentee landlords. This is a misunderstanding of the term absentee landlord. The Plaintiff took action by reporting the trespass to Bamburi Police Station. It is therefore quite apparent that at no time did the Plaintiff acquiesce to the Defendants occupation of this land. The Defendants despite having been properly served with notice of the suit and the hearing thereof have ignored all summonses. This is a clear indication that they do not in fact have a valid defence to this suit. I am satisfied that the Plaintiff has proved his claim as beneficial owner to the suit property. The Defendants have not challenged nor controverted this claim at all. As such the present suit succeeds. The Defendants have not established any right legal or otherwise to occupy and utilize that property. I do hereby grant prayers (a) and (b) of the amended plaint dated 30th July 2009. The Plaintiff made a claim for damages for trespass and the resultant loss therefrom. He made no attempt to address the court on this and made no attempt to explain nor tabulate the loss which may have resulted from this trespass. It is my view that it may prove difficult if not impossible to recover any damages the court may award. As a court I would be reluctant to make orders in vain. As such I decline to award damages. I further make no orders with respect to costs.

Dated and Delivered at Mombasa this 18th day of December 2009.

M. ODERO
JUDGE

Read in open court in the presence of:
Mr. Were holding brief for Mr. Maosa for Plaintiff