

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Case 222 of 2007

HANNY HARTMANN ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

EDWARD MGANGA MBOGO ::::::::::::::::::::::: DEFENDANT

JUDGEMENT

By an agreement in writing dated 4th December 2003 the plaintiff and the defendant jointly bought **ALL THAT** piece of land situate in Mombasa Mainland North and known as Plot No. 9951/Section I/MN for Sh. 7 million from one Job Mwadime Tole. After payment of the said purchase price the property was transferred to them.

The plaintiff, a Swiss National, now claims that she bought that property with the defendant because of the defendant's false representation that being a foreigner she could not purchase land alone in Kenya. After learning of the true position she has filed this suit seeking a declaration that she is the sole owner of the property, an order directing the Registrar of Titles to delete the defendant's name from the register and the eviction of the defendant from the property as well as damages and costs of this suit.

Though served the defendant has not entered appearance or filed any defence and interlocutory judgement has duly been entered against him paving the way for the plaintiff to formally prove her claim.

In her testimony before me the plaintiff repeated the said false representation made to her by the defendant. She stated that she alone paid the entire purchase price of Sh. 7 million and produced a copy of her bank statement showing the transfer of that amount from her account to that of the vendor on the 4th and 9th December 2003.

She also stated that the defendant is just a friend of hers and that they now do not live together. She lives in a rented apartment while the defendant lives in the suit property. In the circumstances she seeks a declaration that she is the sole owner of the property and the eviction of the defendant therefrom. As already stated she also seeks an order directing the Registrar of Titles to delete the name of the defendant from the register as a joint owner with her of the property.

I have considered the uncontroverted evidence of the plaintiff and I am satisfied that she alone paid the entire purchase price of the property. The defendant having failed to defend this suit I accept the plaintiff's testimony that she bought the property with the defendant on the defendant's false representation that a foreigner cannot alone own landed property in Kenya.

Consequently, I grant the plaintiff the declaration that she is the sole owner of **ALL THAT** piece of land situate at Shanzu and known as Plot No. 9951/Section I/MN and direct the Registrar of Titles Mombasa to delete the name of the defendant from the register and leave the plaintiff as the sole owner of that property.

The defendant has fifteen days from the date of service of the decree upon him to vacate the property failing which he shall be evicted. The defendant having not contested the plaintiff's claim I make no order as to costs.

DATED and delivered this 16th day of January 2008.

D.K. MARAGA

JUDGE