



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Civil Suit 324 of 2007

MARIAKANI HOLDINGS LIMITED

AMRITLAL VIRJI SHAH.....PLAINTIFFS

VERSUS

PURSHOTTAM GOVIND PARMAR

SOMCHAND MULJI SHAH.....DEFENDANTS

JUDGMENT

The first plaintiff is a limited liability company whilst the 2nd plaintiff is a male adult of sound mind residing and working in Mombasa. The plaintiffs seek a declaration that they are owners and occupiers of LR No. LND/KAL/29/2005 comprising 7.310474 hectares and LR No. LND/KAL/30/2005 comprising 4.2313 hectares respectively. The plaintiffs seek a further declaration that the defendants are not entitled to and are not the owners and or occupiers of the said parcels (hereinafter called “the suit lands”). The plaintiff further seeks an order directing the Registrar of Titles to register the suit lands in the respective names of the plaintiffs.

The defendants have not entered appearance or filed defence. The suit therefore proceeded exparte. The 1st plaintiff’s evidence was adduced through one Himatlal Dharamshi Patel. He testified that the 1st plaintiff purchased a piece of land comprising 7.310474 in four parts. Said R. Chuka sold to the 1st plaintiff the one part on 20th March 1986. The same Chuka sold to the 1st plaintiff the second part on 17th April 1986. The 3rd part was bought by the 1st plaintiff from Nazir Mohamed Amijee on 11th March 1986. The 4th part was bought from Parkar B. Tajuddin on 12th March 1986. An application to have those pieces of land set a part was made to the County Council of Mariakani for purposes of obtaining a consolidated title of the parcels. The setting apart was duly approved.

An application was then made to the Land Control Board at Kaloleni to have the consolidated piece set apart. Consent was then duly obtained.

As PW1 was carrying out the above transactions he became aware that the defendants had entered a portion of the 1st plaintiff’s land. He reported the trespass to Mariakani Police and Town Council and filed a dispute at the Kilifi District Land Disputes Tribunal at Kaloleni being case No. LND/KAL/29/2005. The case was consolidated with another filed by the 2nd plaintiff i.e. LND/KAL/30 of 2005 against the same defendants. The Tribunal awarded the subject pieces of land to the plaintiffs. That decision was adopted as a judgment of the court on 20th March 2007 in the SRM’s Court at Kaloleni.

The 1st plaintiff produced through PW1 several documents in support of its claim including the following:

1. A survey Map (PEX1).
2. A letter dated 1st April 2004 from the Survey of Kenya identifying the boundaries of the 1st plaintiff's said land (EX2).
3. 1st Transfer from Said Chuka (PEX3).
4. 2nd Transfer from Said Chuka (PEX4).
5. Transfer from Nazir M. Amijee (EX5).
6. Transfer from Parker B. Tajuddin (PEX6).
7. Application to set apart land (PEX7).
8. Letter of Approval PEX8.
9. Application for consent and letter of consent (PEX9 (a) and (b)).
10. Proceedings of Kilifi Land Disputes Tribunal cases Nos. LND/KAL/29 and 30 of 2005 (PEX10).
11. Decree in Land Award case No. 9 of 2007 (PEX11).

On the evidence produced in court PW1 prayed for the reliefs sought in the plaint.

PW2, Amritilal Virji Shah is the 2nd plaintiff. He recalled a dispute involving him and the defendants over his piece of land comprising 4.213 hectares which he had bought from Juma Nzomo on 15th September 1987. He produced the agreement of sale as 2PEX1. He further testified that his land had been surveyed. He produced the Survey Map as 2PEX2. At the time he purchased the said land the same had not been adjudicated upon however, the size and beacons of the land had now been identified. He produced a letter to that effect from the Survey Department which he produced as 2PEX3. He then applied to have the land set a part to the Town Council of Mariakani. The council approved the application. He produced the application and approval as 2PEX4 (a) and (b). The relevant minutes were produced as 2PEX4 (c). The council then consented to his being issued with a title to the said land and demanded Ground Rent for the same. He paid the Ground Rent and produced the letter of consent and receipt as 2PEX5 (a) and (b).

The 2nd plaintiff subsequently learnt that the defendants had entered his land. He complained to Mariakani Town Council, the police, the Chief and the District Commissioner. He then filed at Kaloleni, Tribunal Case No. LND/KAL/30/2005 against the defendants. The case was consolidated with that of the 1st plaintiff and the Tribunal awarded the land to him. He then filed an application for adoption of that award at Kaloleni SRM's Court and that court awarded the land to him. He produced the decree issued as 2PEX6. On that evidence, the 2nd plaintiff prayed for the reliefs sought in the plaint.

Having carefully considered this matter, I am satisfied that the uncontroverted evidence tendered by the plaintiffs and particularly the documentary evidence comprised in the various exhibits tendered herein by the plaintiffs conclusively establish that the suit lands belong to the plaintiffs. The plaintiffs are therefore on a balance of probabilities entitled to the prayers sought in the plaint. For those reasons judgment is entered in favour of the plaintiffs against the defendants as prayed with costs.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 26TH DAY OF JUNE 2008.

F. AZANGALALA

JUDGE

Read in the presence of:-

Mwakireti for the plaintiffs.

F. AZANGALALA

JUDGE

26TH JUNE 2008