



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 360 OF 1999

CONSTANCE M. MWAKITWA

(Suing as personal representative of JAMES M. NDELEKO) .. PLAINTIFF

VERSUS

RESHMA AFTABKHAN DEFENDANT

JUDGEMENT

The plaintiff filed suit claiming ownership of land known as L.R. No. 1956/497 situated at Voi Township. She contends that the defendant unlawfully and without consent of either the plaintiff or her deceased husband wrongfully entered upon the property, taken possession of and erected structures on it. She has three main prayers, that is,

- (a) A declaration that the plaintiff is lawful proprietor of all that piece of land known as L.R. 1956/497 in Voi Township.
- (b) An order directing the defendant to vacate L.R. 1956/497 forthwith and to remove all structures built on the said land.
- (c) A permanent injunction restraining the defendant, her servants and or agents from interfering in any manner whatsoever with the plaintiff's peaceful and quiet possession of L.R. 1956/497.
- (d) Damages for trespass.
- (e) Mesne profits.

a defence on the 1st November 1999 in which she denied in paragraphs 2 and 3 that the plaintiff was the proprietor of the disputed property and if she was then the same was null and void. In paragraph 4 she states that she had moved into the disputed plot with the authority of the Commissioner of lands and the fact was known to the plaintiff.

At the hearing, the defendant did not attend and her counsel Mr. Kanyi Thuo was represented by Mr. Karama who said his instructions were limited to applying for an adjournment on the grounds that they were not aware that a hearing date had been fixed for the day. The court however on scrutinizing an affidavit of service which is on record and being satisfied that service of a hearing notice was effected, the adjournment was denied. At this point Mr. Karama opted not to take part in the proceedings. The plaintiff

in her evidence in chief stated that the disputed property had been allocated to her late husband James M. Ndeleko and upon his death she continued to pay the land rates and issued with receipts in her husband's name until the 3.8.98 when she applied for transmission. On the same date she was issued with a grant of Letters of administration in respect of the said land and was subsequently issued with a Title document. The plaintiff has produced documentary evidence to proof ownership of the land and in the absence of any evidence to the contrary, I hold that:

1. The plaintiff is the legal proprietor of all that piece of land known as L.R. No.1956/497 Voi Township.
2. The defendant shall within a period of 30 days vacate and Remove all the structures built on the said land.
3. An Injunction restraining

The plaintiff did not however adduce any evidence as regards the general damages for trespass and mesne profits and in that regard the claims fail. She will however have the costs of the suit.

Dated and delivered at Mombasa this 22nd day of August 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE