

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO.121 OF 2000

MUNEER OMAR SALIM 1ST PLAINTIFF

NAJAT MUNEER 2ND PLAINTIFF

- versus -

BAKAR MOHAMED AWADH DEFENDANT

J U D G E M E N T

This case came before this Court to-day for formal proof after the Deputy Registrar of this Court entered interlocutory judgement on 6-6-00 in default of appearance.

At the hearing the Second Plaintiff Najat Muneer who was wife to the first Plaintiff Muneer Omar Salim said that sometime in December 1999 they jointly bought property known as Mombasa/Block/XVII/1237 from one Athman Mwakuaza for a consideration of KShs.650,000/-.

The property is registered under Registered Land Act Cap3000 in the names of the two who hold it absolutely. Exhibit 1 the Title Deed confirms this together with Transfer Exhibit 2. It is her evidence that when they took over the property which she says is a house with 7 rooms there were Tenants in it one of whom is the Defendant Bakari Mohamed Awadh. She says the Defendant is falsely claiming to be the owner of the building and is receiving rents from the tenants in the house.

There is a letter from Ms Y.A. Ali & Co. Advocates dated 22-9-99 stating that Defendant is the owner. But while this letter was written before the transfer of the said property to the owners on 8-12-99 the continuance of the Defendant in receiving rent is not an act of trespass but is criminal pretension and obtaining of the money with false pretences. The Plaintiffs would appear to be abetting a criminal act without reporting same. There is no doubt that the Plaintiffs own the property in question absolutely unless there is any better claim which can only be so if the Title Deed is false and the original owner from whom they bought the same was not the owner. The Defendant would be trespassing if he is in possession without any claim and against the consent of the owner.

I find the case proved on a balance of probability but in this case there is no doubt that the two are the owners of the property and I do declare. The plaintiff is also entitled to damages against the Defendant for trespass. There ought to have been a claim here for special damages also for refund of the rent retained by the Defendant.

As for General Damages. I think the Plaintiff is entitled to general damages in this regard I shall allow KShs.120,000/- as general damages plus costs and interest.

Dated this 16th November, 2000.

A.I. HAYANGA

J U D G E