



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 385 OF 2016

ZEINAB AHMED MOHAMED.....PLAINTIFF

-VERSUS-

1. FADHILA ZAHNAN MOHAMED

2. KHADIHA ABDULKAMAN MWINZAGU

3. RUKIYA MOHAMED HABIB.....DEFENDANTS

JUDGMENT

1. The plaintiff commenced this suit by way of a plaint dated 7th December, 2016 seeking a permanent injunction restraining the Defendants either by themselves or their agents, assigns, employees and/or representatives or any person under the defendants instructions from interfering with the plaintiff's quiet and peaceful occupation of a shop situate on PLOT NO.MOMBASA/BLOCK XXXVI/13 opposite Sawa Centre, and general damages for loss of business plus costs of the suit. The plaintiff's case as pleaded is that on 1st November, 2016 one Alye Zahran Mohamed entered into a lease agreement with the plaintiff for lease of a shop on MOMBASA/BLOCK XXVII/13 for a period of 30 years at a monthly rent of Kshs.45,000/=. The plaintiff avers that pursuant to the said agreement, she paid Kshs.90,000 to the lessor being one month's deposit and rent for the month of December, 2016. The plaintiff claimed that on 2nd December, 2016 while renovating the shop for purposes of commencing her business, the defendants wrongfully, unlawfully and illegally invaded the said shop and without any reason whatsoever forcibly entered the premises and interrupted the renovations that was taking place, forcing the plaintiff to halt her operations and to close her shop. That the defendants threatened to return and interfere with the plaintiff's business in the event she re-opens. The plaintiff avers that the defendants have deliberately interfered with her peaceful enjoyment of the lease premises and as a result caused loss and damage to the plaintiff.

2. The defendants filed a defence and counter-claim dated 23rd May, 2017 in which they denied that the plaintiff was a tenant in the suit premises. The defendants stated that the alleged lease agreement was null and void for want of consent of the Wakf Commission as per Section 14 of the Wakf Commissions Act, Cap 109 Laws of Kenya. The Defendants aver that the plaintiff has unlawfully developed and taken possession of the shop and building existing on PLOT NO.MOMBASA/BLOCK XXXVI/13 by purporting to have obtained a lease. They aver that the plaintiff's occupation of the suit premises is unlawful and has exposed the defendants to irreparable loss and/or damage. In their counter-claim the defendants pray for a declaration that the lease over the shop on PLOT NO. MOMBASA/BLOCK XXXVI/13 by the plaintiff is null and void, a permanent injunction, an order of eviction and costs.

3. The plaintiff did not attend court during the hearing despite having been duly served and for that reason the plaintiff's case was dismissed for non-attendance. The matter proceeded for hearing of the counter-claim on 28th January 2012 when the 2nd defendant, Khadija Abdulrahman Mwinzagu testified on behalf of the defendants. Her evidence was that the suit property belonged to the Wakf of the late Mwanamishi Binti Aziz Bin Juma (deceased) and the 1st and 2nd defendants are beneficiaries. She stated that the plaintiff's mother was a trustee of the said Wakf and gave the plaintiff a lease for 30 years. That the said lease is null and void because there was no premium paid and secondly the beneficiaries of the Wakf were not consulted. In addition, it was the defendants' evidence that any Wakf property when leased for more than one year must have consent from the Wakf Commission. That there was no such consent obtained in this case. The defendants urged the court to grant them the orders sought in the counter-claim.

4. In their written submissions dated 3rd March, 2012, A. O. Hamza & Company Advocates cited Section 14 of the Wakf Commissioners Act, Cap 109 Laws of Kenya and submitted that the absence of written sanction from the Wakf Commission, the lease relied on by the plaintiff is invalid. In the circumstances, the defendants prayed for their counter-claim to be allowed as prayed.

5. I have considered the pleadings and submissions. The central issue for determination is whether there is a valid lease over the suit premises which the plaintiff can enforce. In this case, it is not disputed that the suit property is Wakf property. It is also not disputed that the plaintiff's claim is centered on the lease entered into between the trustee of the Wakf who is also her mother for a period of 30 years.

6. Section 14 of the Wakf Commission Act, Cap 109 Laws of Kenya provides that:

“14. Contracts or agreements relating to Wakf property for more than one year must be sanctioned by commissioners. No contract or agreement of any description whatsoever purporting to sell or to lease or otherwise alienate any property the subject of any Wakf for any period exceeding one year shall be valid unless the sanction in writing of the Wakf Commissioners has first been obtained.”

7. I have considered the uncontroverted evidence of the defendants. It is not denied that the suit property is Wakf property. Section 14 of the Wakf Commission Act is clear that contracts or agreements relating to Wakf property for more than one year must be sanctioned by Commissioners. The defendants case is that the lease relied on by the plaintiff which is said to be for 30 years was not sanctioned as required by the provisions of Section 14 of Cap 109. There was no evidence called to contradict the evidence of the defendants, and therefore I accept the testimony presented by the defendants witness that the lease in question was not sanctioned as required by law.

8. Consequently, I allow the defendants counter-claim a prayed. The plaintiff has thirty days from the date of service of the decree upon her to vacate the property failing which she shall be evicted. Costs of the suit are awarded to the defendants.

9. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 26TH DAY OF MAY, 2021

.....

C.K. YANO

JUDGE

IN THE PRESENCE OF:

Yumna Court Assistant

C.K. YANO

JUDGE