

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 231OF 2012

OMARI SEFU DZILA..... PLAINTIFF

- V E R S U S -

SAID HAMAD TENGEZA DEFENDANTS

JUDGMENT

[1] The plaintiff Omar Sefu Dzila filed this suit against Said Hamad Tengeza praying that he be declared the lawful owner and is entitled to exclusive and unimpeded right of possession use and quite enjoyment of Plot Kwale/Golini "B" 57 measuring 2.6. ha situated at Kwale. He further prays that the defendant do move and vacate from the said plot and a permanent injunction do issue restraining the defendant by himself, his authorized agents and/or servants or otherwise howsoever from trespassing or interfering with the plaintiffs use, possession and quiet enjoyment of the same.

[2] The defendant was served on 26th October 2012 with copies of Summons to enter appearance, Notice of Motion, the Plaint, Plaintiffs affidavit, statement and list of witnesses and a list of documents. He accepted service and signed on the copies filed in court. A memorandum of appearance was entered on his behalf by Mandi & Co. Advocates on 31st October, 2012. He failed to file his defence and a request for judgment was made on 8th May, 2013. The judgment was entered by the Deputy Registrar on 21st May, 2013 and the case was listed for formal proof.

[3] On 1st August, 2013 this matter came up for formal proof. Omari Sefu Dzila the plaintiff told the court that he got land Kwale/Golini/'B' 51 from his father. the land was converted into a settlement scheme and that he was later given a letter of allotment on 20th August, 1981. He produced the allotment as PEXH. 1. He said he paid Kshs. 525 on 15th February 1989 produced it as Exhibit 2. He was issued with a Title Deed on 15th March, 1987. He produced a certificate of outright purchase as Exh. 3. He also produced a letter of 17th September, 1996 and a payment of Kshs. 395. He stated that he was shown the land after paying Kshs. 2,000 for survey and legal fees. He produced the receipts for such payments. The title deed in the plaintiff's name was produced as PExh. No. 6.

He said that he had come to court because the defendant had entered his land and put building stones on the land on 17th October 2012. The Plaintiff stated that he instructed his lawyer to send a demand notice to the defendant who has continued to build on his land and that the house is now complete. He exhibited photographs of the house constructed by the defendant on his land. They were produced as PExh. 9.

[4] The defendant stated that he knows the defendants land which he claimed is Kwale/Golini B/55. He annexed a photocopy of the Deed Plan showing their plots. The same was marked as PExh. 10. He produced a search certificate from the land office showing that the land is registered in his name. He stated that the defendant was not his neighbour and that the plaintiffs neighbour is the defendants mother one Twahia Mbongi. He pleaded with the Court to allow his prayers as set out in the plaint and order that the defendant do move out and vacate his land.

[5] Having heard the evidence of the plaintiff and having also perused all the documents of the plaintiff, I am satisfied that the suit land truly belongs and is registered in the name of the plaintiff. I am equally satisfied and convinced that the defendant entered the suit land without any colour of right and started to

erect a house thereon. That he was given notice not to do so but he ignored and proceeded with his construction. I declare that the land KWALE/GOLINI "B" 51 belongs to the plaintiff. The defendant herein should move out and vacate therefrom within ninety (90) days failing which the plaintiff shall have the right to forcefully evict him therefrom.

The Court issues a permanent injunction restraining the defendant by himself, his authorized agents and servants from interfering in anyway with the plaintiff's use possession and quiet enjoyment of Land Parcel Kwale/Golini 'B' 51 measuring approximately 2.6. ha.

The plaintiff shall have the costs of this suit.

Dated and delivered in open Court at Mombasa this 14th day of February, 2014.

S.N. MUKUNYA

JUDGE

14.2.2014

In the presence of:

Hamza Advocate for Waithera advocae for the Plaintiff

Mandi Advocate for the respondents