

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 216 OF 2016

ABUU MOHAMED AHMED.....PLAINTIFF

VERSUS

ABDULRAHMAN MOHAMED AHMED.....DEFENDANT

JUDGMENT

1. By a Plaint dated 30th June 2016 and filed herein on 23rd August 2016, Abuu Mohamed Ahmed (the Plaintiff) prays for an order of a permanent injunction to issue against Abdul-Rahman Mohamed Ahmed (the Defendant) restraining him from taking possession of the Plaintiff's two bedrooms and one toilet contained in the eastern wing of a residential house situated at Majengo/ Mapya area in Malindi. The Plaintiff also prays for costs of this suit and interest thereon at Court rates.

2. The basis of the Plaintiff's claim is that sometime in the year 1998, he entered into an agreement with the Defendant in which they agreed to jointly construct a residential house comprising of four bedrooms and two toilets which they were to own jointly after completion. The agreement was reduced into writing on 5th February 2008.

3. It is the Plaintiff's case that he subsequently left for Tanzania having leased his two bedrooms and a toilet to a tenant who paid rent to him. However, sometime in the year 2015, the Defendant purported to take over the entire building and proceeded to evict the Plaintiff's tenant therefrom.

4. Despite service of the summons and pleadings, the Defendant neither entered appearance nor filed a Defence herein. This matter accordingly proceeded to hearing by way of formal proof.

5. Testifying on behalf of the Plaintiff, Hussein Mohamed Ahmed (PW1) told the Court that he is an elder brother to both the Plaintiff and the Defendant. He told the Court that the Plaintiff who works in Tanzania had donated a Special Power of Attorney dated 15th September 2016 authorizing him to testify on his behalf. He produced the Special Power of Attorney in Court (PEXh 1).

6. According to PW1, in the year 1998, both the Plaintiff and the Defendant agreed to do business together. They bought a house and built a house which had four rooms and two toilets. Thereafter, they agreed to divide the same as per an agreement executed between the Plaintiff and the Defendant dated 5th February 2008(Pexh 2). As per the Agreement, each party was to take control and ownership of two rooms and one toilet.

7. In 2013, the Plaintiff moved to Tanzania and left PW1 to manage his portion of the house. PW1 then proceeded and fitted the Plaintiff's house with electricity and water. They then put in a tenant.

8. It was PW1's testimony that sometime in 2015, the Defendant started disturbing the tenant and claiming he owned the whole house. PW1 reported the matter to the Chief but he did not resolve the same. The tenant was then forced to leave and the Defendant proceeded to lock the door to the Plaintiff's room.

9. I have considered the pleadings filed, the Plaintiff's testimony and the evidence adduced before me. The Defendant neither entered appearance nor filed a Defence to the Plaintiff's claim. The Plaintiff's evidence thus was uncontroverted and I did not find any reason to doubt the same.

10. From the said evidence, the Plaintiff has demonstrated that he is the sole owner entitled to possession of the two rooms and a toilet situated on the eastern wing of the house that they built with his Defendant brother. The Defendant's action of purporting to claim the entire house and proceeding to lock the portion of the house owned by the Plaintiff has deprived the Plaintiff of the right of user, enjoyment and benefit of his property.

11. Accordingly, I am satisfied that the Plaintiff has established his case on merit and to the required standards. Judgment is accordingly entered for the Plaintiff in terms of Prayers 'a' and 'b' of the Plaint.

12. Order accordingly.

Dated, signed and delivered at Malindi this 18th day of January, 2019.

J.O. OLOLA

JUDGE