



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ELC SUIT NO.103 OF 2017**

**OMAR MOHAMED KIKARATA.....PLAINTIFF**

**VERSUS**

**SUDI HAMISI.....DEFENDANT**

**JUDGMENT**

1. By a Complaint filed on 28<sup>th</sup> March, 2017 the Plaintiff pleaded that he is the registered owner of land parcel **L.R NO. KWALE/MKONGANI "B"/295** having purchased it on 20<sup>th</sup> September, 2014 pursuant to a sale agreement with one Mr. Matano Juma Mbaruku who was previously registered as the owner.

2. The Plaintiff's claim against the Defendant is for orders as follows;-

- a) An order of eviction against the Defendant on Plot No. KWALE/MKONGENI "B"/295
- b) That the officer commanding station Kwale Police Station does offer supervision during the eviction process.
- c) A permanent Injunction restraining the Defendant by himself, agents, employees, servants and/or other persons acting on their behalf from trespassing, developing and/or entering into the suit property being Plot No. KWALE/MKONGENI "B"/295 in any manner whatsoever.
- d) Costs of this suit and interest at court rates.

3. The Defendant was served with Summons to enter Appearance and only filed a Memorandum of Appearance dated 2<sup>nd</sup> May, 2017 and filed on 3<sup>rd</sup> May, 2017. However the Defendant failed to file a Defence prompting the Plaintiff to seek and obtain interlocutory judgment against the Defendant. Subsequently the matter was listed for formal proof. Thus plaintiff's case is undefended.

4. At the formal proof hearing the Plaintiff testified that he is the registered proprietor of the suit land. He attached a copy of Certificate of title issued to him on 19<sup>th</sup> November, 2014, as well as Certificate of official search dated 13<sup>th</sup> November, 2013. The Plaintiff adopted his witness statement and produced the documents contained in the list filed on 28<sup>th</sup> March, 2017 as exhibits in support of his case.

5. The Plaintiff filed Submissions on 12<sup>th</sup> November, 2018 submitting that the Plaintiff entered into a sale agreement with one Mr. Matano Juma Mbaruku where purchased the suit land and holds a clean title with no known encumbrance. He further submitted that on 17<sup>th</sup> May, 2016 the Plaintiff conducted a search at the Lands Registry and had been shocked to find that the Defendant had faked a green card and inserted his name in the green card as the proprietor of the suit property. That the Plaintiff approached the Land Registrar Kwale who directed him to bring a certified true Copy of his title deed to prove ownership, which he did and the Defendant was summoned. The Registrar whereupon realizing the fraudulent green card, proceeded to cancel the wrong entry and entered the Plaintiff's name as its absolute owner of the suit property.

6. The Plaintiff further submitted that by the court Ruling dated 18<sup>th</sup> September, 2014 and a decree from the High Court MOMBASA ELC No. 66 OF 2014 SUDI HAMISI –VS- MATANO JUMA MBARUKU & KWALE DISTRICT LAND REGISTRAR the claim by the Defendant over the suit land was dismissed with costs. That the Defendant further went ahead and filed a Petition No. 265 of 2014 which Petition was also struck out with costs vide a Ruling dated 13<sup>th</sup> July, 2016

7. Having considered the documents filed in support of the case clearly shows there is being no justification for the Defendant's continued occupation of the suit property. The court therefore holds that the Plaintiff has proved his case on balance of probabilities and makes orders allowing the prayers (a), (b) & (c) of the plaint with an order each party to meet their respective costs of the suit.

8. The defendant is directed to surrender vacant possession of the suit property within 60 days of service of the decree herein. In default, the plaintiff to carry out the eviction exercise and the OCS Kwale Police Station to supervise in ensuring law and order is maintained.

**Dated, Signed and Delivered in Mombasa this 7<sup>th</sup> March 2019.**

**A. OMOLLO**

JUDGE