



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**  
**AT MOMBASA**

**ELC CASE NO. 190 OF 2014**

SALMA SAID SALIM.....1<sup>ST</sup> PLAINTIFF

FEIZA MOHAMED SALIM.....2<sup>ND</sup> PLAINTIFF

VERSUS

FEISAL MOHAMED ALI.....1<sup>ST</sup> DEFENDANT

HADHI SWALE HADHIBU.....2<sup>ND</sup> DEFENDANT

**JUDGEMENT**

1. The Plaintiffs sued the 1<sup>st</sup> and 2<sup>nd</sup> Defendants vide their plaint dated 25<sup>th</sup> September 2012 seeking the following orders;

**(a) An order be issued to revoke their sale agreement of the dwelling house situated in Plot No. 470/1/MN and eviction of the 2<sup>nd</sup> defendant, his friends, relatives or his family from the same house.**

**(b) Costs of this suit.**

**(c) Interest on (b) above at court rates.**

**(d) Any other or further relief as this Honourable High Court may consider just.**

2. The plaintiffs claim is that the 1<sup>st</sup> Defendant who is the owner of the Plot No. 470/1/MN has sold their house without land built on the said parcel to the 2<sup>nd</sup> Defendant without the Plaintiff's consent. That the plaintiffs have made several attempts to resolve the matter without success.

3. The Defendants filed a joint statement of defence on 29<sup>th</sup> October 2012 challenging the orders sought by the plaintiff. The 2<sup>nd</sup> Defendant pleaded that he bought a house without land from Mohamed Musa Mohamed on 23<sup>rd</sup> October 2011 for a consideration of Kshs1,000,000/= and the 1<sup>st</sup> Defendant gave consent. The Defendants also plead that the plaintiffs have not demonstrated that the suit property forms part of the estate of Omar Mohamed Salim. The Defendants pleaded that the plaintiffs lack legal capacity to bring this suit.

4. The preliminary objection on capacity was determined on 5<sup>th</sup> November 2013 by Justice Muya. The matter proceeded to full hearing in the absence of all the defendants and their advocate. The plaintiffs called 4 witnesses. The defendants filed a list of documents which contained a sale agreement dated 23<sup>rd</sup> October 2011 between the 2<sup>nd</sup> Defendant and a Mr. Mohamed Musa Mohamed over Plot No. 217/Sec 1/MN Mtopanga.

5. PW4 Mr Patrick Lugogo gave evidence stating that he is the Chief Building Inspector for the County Government of Mombasa. He presented to the court a map for the area (P ex 6) and two sets of building plans (P ex 5(a) and (b)). The approved plan for a building on plot 470/1MN was issued to Omar Mohamed Salim while the approved building plan on plot no 217/1/MN was issued to Mohamed Musa Mohamed. PW4 added that Plot Nos. 470/1/MN and 217/1/MN are lying on the same area as per the map (P ex 6) neighbouring each other.

6. The evidence of PW4 was sufficient in determining this matter based on the pleadings filed. Why do I conclude in this manner? The 2<sup>nd</sup> defendant in his replying affidavit sworn on 25<sup>th</sup> October 2012 and filed in court on 29<sup>th</sup> October 2012 annexed two sale agreements all referring to Plot No. 217/1/MN-Mtopanga as annex A & B. He also annexed a building plan for his development on Plot 217/1/MN issued to

Mohamed Musa Mohamed. The 2<sup>nd</sup> defendant thus has no interest over Plot No. 470/1/MN has ever been passed to him as by the 1<sup>st</sup> defendant he alleges.

7. The second Plaintiff produced a marriage certificate between her and Omar Mohamed Salim. The date of marriage is given as 31<sup>st</sup> December 1993. She also produced a death certificate dated 8<sup>th</sup> March 2006 showing Omar Mohamed Salim died on 8<sup>th</sup> September 2004. The plaintiffs also produced a building plan approved and issued to Omar-deceased on 30<sup>th</sup> June 2003 over Plot No 470/1/MN. PW1 stated that her husband had begun putting up the house but unfortunately he died before completing it. From the documentary evidence presented indeed the 2<sup>nd</sup> plaintiff who is the widow to the late Omar together with his children are the ones entitled to inherit/claim the structure that Omar-deceased had put up as well as any interest he had over the suit plot.

8. Before filing this suit, this Plaintiffs stated that they went before the chief to try and resolve the matter but the defendants did not make any appearance. A copy of the Chief's summons to both defendants dated 26<sup>th</sup> March 2012 was produced as P ex 4. When the defendants failed to adhere to the summons the Plaintiffs came to court for assistance.

9. I have considered the evidence presented to prove the Plaintiffs case which evidence has not been challenged. I am satisfied that the plaintiffs have proved their case. This court finds for the Plaintiffs that they are entitled to quiet possession and user of the house without land on Plot No. 470/1/MN. If the 2<sup>nd</sup> defendant did any developments on the said house on Plot No. 470/1/MN then he has himself to blame for putting his money on a property he did not buy and in spite of being forewarned by the Plaintiffs, he disregarded. Accordingly I enter judgment for the Plaintiff as prayed in the plaint in terms of paragraphs (a) & (b) thereof.

**Dated, Signed and Delivered at Mombasa this 12<sup>th</sup> day of July 2019.**

**A. OMOLLO**

**JUDGE.**