



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CIVIL CASE NO. 112 OF 2010

CHE TAN DHUTIA.....PLAINTIFF

= VERSUS =

1) MASHA BIRYA

2) EMILLY MICHERE TUMBO.....DEFENDANTS

J U D G E M E N T

1. The plaintiff commenced this suit vide his plaint dated 16/4/2010 against the two defendants seeking the following reliefs:

a) An injunction to restrain the defendants whether by themselves or through their agents, servants and/or any other persons claiming through them from trespassing onto and/or in any other manner whatsoever trespassing onto the Suit Property or from interfering with the plaintiff's possession and use thereof;

b) Damages;

c) Costs of and incidental to this suit.

2. The plaintiff pleaded that he purchased the property known as subdivision No. 1317/III/MN from Safi Mining Development Limited on 9th December 1997 and paid the agreed purchase price of Kenya Shillings Four Million. That since then he has been in possession.

3. The plaintiff pleaded that on or about 5th March 2010, the plaintiff's security guard guarding the Suit Property was arrested by the Police and taken to the Mtwapa Police Station on allegations that he was a trespasser on the plaintiff's property. Further on 29th March 2010, the lock on the gate to the plaintiff's property was broken and heads of cattle driven onto the plaintiff's property by the defendant's and/or persons unknown to the plaintiff but claiming rights under the defendants.

4. The plaintiff continued in his plaint that the actions of the defendants and/or the persons claiming through them of encroaching onto the Suit Property amounts to a trespass which is continuing and by reason of which the plaintiff has been and continues to be deprived of the use and enjoyment of his property and unless restrained by this honourable Court will continue with their acts of trespass on the suit property.

5. The defendants were served with summons to enter appearance who entered appearance on 3rd May 2010 through Kamoti & Co. Advocates. However no defence was filed.

6. The plaintiff filed a list of documents on 15th November 2017 which contained the following documents:

1) A copy of a letter dated 9th December 1997 from Safi Mining Development Limited to the plaintiff.

2) A copy of letter dated 31st January 2009 from Safi Mining Development Limited to the plaintiff.

3) A copy of Transfer of Lease from Safi Mining Development Limited to the plaintiff.

4) A copy of a letter dated 2nd March 2010 from Messrs Ghalai & Ghalia, Advocates to Mr. Walter Brun relating to subdivision No. 1317 of Section III/MN.

5) A copy of Certificate of Title No. CR. 21203 in respect of Plot No. 1317/III/MN registered in the name of Safi Mining Development Limited.

6) A copy of Transfer dated 30th June 1990 from juma Kalume Kitsaumbi and Billy Kalume Kitsaumbi to Johannes Gerweine.

7) A copy of land rates receipt No. 3005 paid for land rates for the year 2010 issued by the County Council of Kilifi to Safi Mining Development Limited in respect of Plot No. 1317/III/MN and a copy of receipt No. 3128460 paid for Clearance Certificate for the year 2010 in respect of Plot No. 1371/III/MN.

8) A copy of payment request for land rates in respect of Plot No. 1317/III/MN for the year 2009 with acknowledgment of payment thereon.

9) A copy of Clearance Certificate issued by the County Council of Kilifi for the year 2020 to Safi Mining Development Limited in respect of Plot No. 1317/III/MN.

10) Copies of PIN Certificates and Passports of the Directors of Safi Mining Development Limited.

11) Copy of PIN Certificate of Safi Mining Development Limited.

7. In support of his case, the plaintiff on 3rd April 2019 adopted his witness statement also filed on 15th November 2017 and produced the documents filed as exhibits. He urged the Court to issue an order of permanent injunction to restrain any interference with the suit property. The plaintiff added that from July 2010 when he got the restraining orders there has been no interference to date.

8. The facts set out in the plaint have not been contested. The plaintiff went ahead to produce documents to demonstrate how he acquired ownership of the suit property. The plaintiff informed the Court that since July 2010 when he got the temporary order of injunction, there has been no interference with the suit property. In essence the plaintiff has been enjoying peaceful user and occupation of his property.

9. Having established ownership of the suit property and the claim herein having proceeded undefended, I hereby enter judgment in terms of prayer (a) of the plaint. No injury was proved to entitle the plaintiff to payment of damages thus none is awarded. Costs of the suit to be borne by the plaintiff.

Dated and signed at Busia this 19th day of November, 2019.

A. OMOLLO

JUDGE

Delivered and Read at Mombasa this 27th day of November, 2019

C.YANO

JUDGE

In the Presence of:

Counsel for the Plaintiff:

Counsel for the Defendants: