



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC NO 258B OF 2016.**

**SHREEJI ENTERPRISES (K) LTD ..... PLAINTIFF**

**VERSUS**

**JOHN MASHA & 33 others and all other unknown persons**

**trespassing onto and or dealing in any manner on**

**PLOT No. MN/V/1816 Miritini area of Mombasa County ..... DEFENDANTS**

**JUDGMENT**

1. The Plaintiff has filed this suit against the Defendant seeking;

**a) A declaration that the Plaintiff is and has always been the bona fide proprietor of the Land known as No. 1816/VI/MN within Miritini area in Mombasa County;**

**b) A permanent injunction restraining the Defendants, whether by themselves or their servants or agents or otherwise howsoever from trespassing onto, remaining on or continuing in occupation of the suit property or dealing with the suit property in any way;**

**c) An order compelling the Defendants to vacate the suit property and to deliver vacant possession thereof to the Plaintiff;**

**d) Damages;**

**e) Costs of the suit.**

**f) Any other relief that this Honourable Court may deem fit to grant.**

2. On the 2<sup>nd</sup> February, 2017, the court allowed the Plaintiff's application dated 25<sup>th</sup> October, 2016. It directed that the Defendant be served with summons to enter appearance and plaint by way of substituted service through advertisement in a widely read local newspaper. The Defendants were to enter appearance within twenty one (21) days of the advertisement.

3. The Defendants neglected to enter appearance and/or file defence within the stipulated period and the matter proceeded for formal proof.

4. It is the Plaintiff's case that it is the registered proprietor of Land Parcel Number 1816/V/MN within Miritini area of Mombasa County.

P.W.1 Mark Otieno Odhiambo testified on behalf of the Plaintiff. He stated that he was the Human Resource Manager of the Plaintiff and had been authorized by the Plaintiff to swear the affidavits and testify in this suit. He confirmed that there was an authority of the Plaintiff under its seal filed in court to that effect.

5. He produced the following documents as exhibits P1;

**1) Certificate of search confirming the suit property is registered in the name of the Plaintiff.**

**2) Transfer.**

- 3) Certificate of title confirming the suit property is owned by the Plaintiff.
- 4) Google maps for 2006, 2011 and 2012 showing the property had no squatters or other occupants in these years.
- 5) Photographs of the Defendant's structures.
- 6) Ground report by Edward Kiguru Land Surveyors dated 16<sup>th</sup> October, 2012.
- 7) Notice to vacate suit property dated 1<sup>st</sup> September, 2014.
- 8) Affidavit of service sworn by Leonard Joseph Wanjogu on 23<sup>rd</sup> November, 2014.
- 9) Pleadings in Mombasa ELC Case No. 102 of 2012.
- 10) Order issued on 10<sup>th</sup> July, 2014.
- 11) Judgment dated 1<sup>st</sup> November, 2013 in Mombasa Criminal Case No. 3214 of 2012, Republic –versus- Anna Mutuli.

6. He prayed that the Defendants be evicted so that the Plaintiff can develop the property. He further told the court that the Plaintiff has suffered and continues to suffer loss and damage as it is not able to develop the property.

7. I have considered the Plaintiff's case in totality. The same is uncontroverted. I find that the Plaintiff has proved its case on a balance of probabilities. I however decline to grant damages as the court has not been guided as to how much damage has been suffered by the Plaintiff and how much could be awarded. The Plaintiff has also sought the assistance of police during the eviction which I do grant to ensure law and order prevails during the said eviction.

I am guided by the cited cases of;

a) Ahmed Suleiman & Another –versus- Khamis Surur (2013) eKLR.

b) Bruce Joseph Bockle –versus- Coquero Limited (2017) eKLR, where the Court of Appeal, while upholding the High Court's decision which ordered eviction of the Appellant with the assistance of the police had this to say;

**“Looking at the orders issued in the judgment dated 14<sup>th</sup> March, 2013 and in particular the mandatory injunction, it is clear to us that they required the appellant to give vacant possession of the suit property to the Respondent. Enforcement of such an order could only be by way of eviction as stipulated under Order 22 Rule 29 of the Civil Procedure Rules. Therefore we find that the learned Judge correctly issued an order of eviction of the Respondent from the suit property.....”**

9. All in all, I find that the Plaintiff has made out a good case against the Defendant and I enter judgment on its favour as follows:-

a) A declaration be and is hereby issued that the Plaintiff is and has always been the bona fide proprietor of the land known as No. 1816/V/MN within Miritini area in Mombasa County.

b) A permanent injunction be and is hereby issued restraining the Defendants, whether by themselves or their servants or agents or otherwise howsoever form trespassing onto, remaining or continuing in occupation of the suit property or dealing with the suit property in any way.

c) An order is hereby issued compelling the Defendants to vacate the suit property and to deliver vacant possession thereof to the Plaintiff FAILURE to which the Defendants be evicted from the suit property. The officer in charge of the nearest police station to provide security during the eviction exercise.

d) Costs of the suit.

It is so ordered.

Dated, Signed and Delivered at Mombasa on the 18<sup>th</sup> day of April 2018.

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L. KOMINGOI

JUDGE

18/4/2018.