



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CIVIL SUIT NO. 74 OF 2014**

**MASH PROPERTIES LIMITED..... PLAINTIFF**

**VERSUS**

**MOHAMED ISSACK.....1ST DEFENDANT**

**FREDRICK BOSIRE GESIMBA.....2ND DEFENDANT**

**JUDGMENT**

1. Through a plaint dated 28/2/2007 and filed in court on even date, Mash Properties Limited brought this suit against Mohamed Isaack. An amended plaint dated 27/7/2007 was subsequently filed on 20/8/2007, joining Fredrick Bosire Gesimba as the 2nd defendant. The dispute in the suit relates to LR No. 209/10989 comprised in Title No. IR. 45723, situated in Embakasi, Nairobi (**the suit property**).

2. The plaintiff contends that it is the registered proprietor of the suit property. It further contends that in or about January 2007, the defendants trespassed on the suit property and started constructing residential houses thereon. Aggrieved by the trespass, the plaintiff brought this suit, seeking the following orders against the defendants:

- i. a permanent restraining order;
- ii. an order directing the pulling down and removal of all the structures erected on the suit property;
- iii. General damages;
- iv. and costs of the suit.

3. The 1st defendant did not file any defence to the suit. On his part, the 2nd defendant filed a defence dated 25/3/2009 in which he contended that the suit property was given to him by the Ministry of Lands and belonged to him. He denied being a trespasser and contended that he had stayed on the suit property for a period exceeding 15 years. He further contended that the plaintiff was the trespasser. He urged the court to dismiss the plaintiff's suit.

4. Hearing of this suit took place on 29/3/2017. The plaintiff called one witness, PW 1 - Ashokbhai Chunlal Patel. He stated that he was the General Manager of the plaintiff company. He adopted his witness statement filed on 25/6/2012 as his sworn evidence in chief. He produced as Plaintiff Exhibits 1 to 14 documents contained in the plaintiff's Bundle dated 21/6/2018 and filed on 25/6/2012. He also produced the 5 documents contained in the plaintiff's Bundle dated 5/2/2014 and filed on the same day. Among the 19 documents produced were Grant Number IR 45723 registered on 20/9/1988 bearing the plaintiff as the registered proprietor; land rent invoices and receipts; rates invoices and receipts and a letter dated 26/9/2007 from the Principal Registrar of Titles confirming that the suit property belonged to the plaintiff. The defendants did not lead any evidence.

**Issue and determination**

5. The plaintiff and the 2nd defendant filed written submissions to advance their respective cases. I have considered the parties' pleadings and submissions. I have also considered the plaintiff's evidence.

6. The single issue which falls for determination is the ownership of the suit property. The plaintiff company contended that it is the proprietor of the suit property. The 2nd defendant similarly contended that it is the proprietor of the suit property. At the hearing, the plaintiff led evidence and produced Grant Number IR 45723 together with Deed Plan No. 135518 in which Land Reference Number 209/10989 is comprised. The Grant shows that the plaintiff is the registered proprietor of the suit property. The plaintiff also produced land rent invoices and payment receipts/slips. The plaintiff further produced rates invoices and payment receipts. The 2nd defendant did not lead any evidence to support his claim of title to the suit property.

7. In the absence of any evidence supporting his claim of title to the suit property, the 2nd defendant's claim of title is rejected for failure to satisfy the requirements of Sections 107, 108 and 109 of the Evidence Act. The court is accordingly satisfied that the plaintiff has proved its case on a balance of probabilities in so far as ownership of the suit property is concerned.

8. No evidence was led to support the claim for general damages. Consequently, no award will be made on this limb of the claim.

9. In light of the above findings, the court hereby enters judgment in favour of the plaintiff against the defendants in terms of prayers 1, 2 and 5 of the Amended Plaint.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 6TH DAY OF JULY 2018.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr Dando holding brief for Mr Masika Advocate for the Plaintiff

Mr. Omagwa holding brief for Mr Mogire Advocate for the defendant

Mr Rangi - Court Clerk