



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC NO 232 OF 2012**

**MARIAM MWINYI KOMBO.....PLAINTIFF**

**-VS-**

**1. MWANATUMU MWINYI HAMISI**

**2. AMINA MWINYI KOMBO**

**3. MWANAJUMA MWINYI MWINYIKOMBO**

**4. MWINYIKOMBO MWINYI MWINYIKOMBO.....DEFENDANTS**

**JUDGMENT**

1) By a Plaintiff dated 24<sup>th</sup> October, 2012 and filed herein on 25<sup>th</sup> October, 2012, the Plaintiff prays for an order that the portion of **PLOT NO. MN.XVII/280/MI** and the house thereon belongs to her and an injunction to issue restraining the defendants, their servants and/or agents from selling, disposing or in any other manner dealing with the attached goods.

2) The plaintiff's prayers are premised on the fact that the Plaintiff purchased the suit property from the defendants vide an agreement dated 27<sup>th</sup> February 1999. It is the plaintiff's case that upon execution of the said agreement, she paid the purchase price and built thereof premises she lives together with her family to date.

3) The Plaintiff avers that in or about the month of September, 2012 the defendants sent unknown people to view the said premises with the intention of purchasing the same. The plot was initially registered in the names of Awadh Saleh and Said Sherman before it was sold to the Plaintiff and that the defendants had no authority to have it registered in their names without the Plaintiff's knowledge and/or consent. It is the Plaintiff's case that the defendants threaten and intend, unless restrained by this Court, to take and dispose of the property and the Plaintiff shall suffer loss and damage.

4) In their statement of defence dated and filed on 5<sup>th</sup> December, 2012, the Defendants aver that contrary to the Plaintiff's position the Plaintiff has never done any construction on the suit plot. They deny sending anybody to view the plot. The defendants admit that the plot was registered in the names of Awadh Saleh and Said Saleh Sherman. The Defendants aver that they invited the Plaintiff to the Chief's office with a view of being included as co-owner of the suit plot but the Plaintiff refused. The Defendants further aver that the Plaintiff has been enjoying rent from the suit plot.

5) At the trial, the Plaintiff testified that on 27<sup>th</sup> February 1991 she bought a house from the 4<sup>th</sup> Defendant, who is also her younger brother. The purchase price was kshs.600,000 out of which the Plaintiff paid a deposit of Kshs.300,000. The agreement dated 27<sup>th</sup> February 1999 was produced as P.exh No.1. The Plaintiff further told the court that she later raised the balance of kshs.300,000 which she paid to the Defendants and the house became hers. She was given all the relevant documents including the transfer which she produced as Pexh No.2-5. The Plaintiff stated that upon receipt of the full purchase price, the Defendants went and bought their own house.

6) The defendants were represented during the hearing of the Plaintiff's case, although their advocate did not sit through the full trial. The defendants did not however, attend court on 15<sup>th</sup> May 2018 when the case came up for hearing. The case therefore proceeded in their absence.

7) I have considered the evidence placed before me by the Plaintiff. In their defence the defendants do not deny the Plaintiff's averments. Indeed in paragraph 7 of the defence, the Defendants aver that the Plaintiff was invited to the Chief's office with a view of being included as a co-owner of the suit plot. This in my view is an acknowledgment that the Plaintiff has interest in the suit plot as pleaded.

8) The defendants having not called evidence to rebut what the Plaintiff stated, the Plaintiff's evidence remains uncontroverted. In the circumstances, I am satisfied that the Plaintiff has proved her case to the required standard. In the event, I hold that the Plaintiff is entitled to the reliefs sought in the Plaintiff.

9) Accordingly, I enter judgment for the Plaintiff as prayed in the Plaintiff.

10) The Plaintiff will have costs of this suit.

**Delivered, signed and dated at Mombasa this 27<sup>th</sup> September, 2018.**

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**C. YANO**

**JUDGE**