



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC CASE NO. 120 OF 2014

ELIUD MWAKIO MCHAROPLAINTIFF

-VERSUS-

1. CHEKA ABRAHAMANI}
2. OMARI TWALIB}
3. BAKARI RUWA}
4. MUTUGO DAUD}
5. MBITI}
6. ABDALLAH SAID}
7. BONFACE SAID}
8. OMARI TWALIB}
9. MAMA ESTA}
10. MESALIMU}
11. MUTENGI}
12. JOBU (scrape dealer)}
13. WAITHAKA}
14. SAMMY M MUSYIMI}
15. FRANCISCAR MWASI}
16. NICKSON LEL}
17. NICOLAS MWASHIGHADI}DEFENDANTS

JUDGEMENT

1. The plaintiff sued the seventeen (17) defendants vide his plaint dated 26th May 2014 praying for judgement against them jointly and severally for

i) Vacant possession from all that piece/parcel of land known as plot MN/1/6946 and the demolition of any structures erected thereon by the defendants.

ii) Costs of this suit

iii) Interest on (b) above

iv) Any other relief this court deems fit to grant

2. The summons to enter appearance and plaint was served on the defendants by way of advertisement in the Daily Nation newspaper of 28th January 2015. All the defendants did not enter appearance or file defence within the prescribed time. Consequently the plaintiff requested for interlocutory judgement which was entered and endorsed on 27th March 2015. The plaintiff thereafter set down the suit for formal proof on 5th September 2016.

3. On 5th September 2016, the plaintiff testified as PW1. He said that he lives in Mwatate, Taita Taveta County and is a retired Civil Servant. He testified that he has sued the 17 people who have squatted on his plot no.20632 situated in Bombolulu and registered as L.R. no. 6946/1/MN. He continued that he has a title deed for the plot and showed court the original title showing he is the registered owner. A copy of the title was produced as P-ex1. He also produced a certificate of postal search dated 31st January 2014 showing he is the owner of the land. He produced the certificate of search as P-ex,2.

4. The plaintiff continued that he wishes to adopt his statement filed in court as part of his evidence. In the statement, he stated that early 2014 he sent a representative to check the status of the plot. The representative brought word back that the plot was invaded by people. The plaintiff said these people had put up structures on the land without his knowledge and permission. The plaintiff stated further that he wrote to these people to discuss their occupation but they refused to attend any meeting and have defiantly remained in occupation.

5. It is the plaintiff's evidence that the defendants are illegally in occupation of his plot and ought to be removed to enable him develop it. He asked the court to give him eviction orders against the defendants. He also prayed for costs of this suit.

6. This evidence has not been opposed. The plaintiff also produced a title deed showing that he is the registered owner of the suit property. The defendants were duly served. As submitted by the plaintiff's advocate, the plaintiff is entitled to enjoy his property as protected under article 40 of the Constitution and Section 24 & 25 of the Land Registration Act. I find no reason why I should deny him this right in the absence of any contrary evidence. Consequently I find that the plaintiff has proved his case on a balance of probability and do allow the prayers contained in the plaint.

Dated and Delivered at Mombasa this 20th day of Jan 2017

A. OMOLLO

JUDGE