



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA

ELC CIVIL SUIT NO. 140 OF 2014

ABDULRAHMAN MOHAMED MWINZANGU.....PLAINTIFF

-VERSUS-

JOSEPH BADU MOHAMED.....DEFENDANTS

JUDGEMENT

1. The plaintiff sued the defendants herein seeking for judgement to be entered jointly and severally in the following terms:

- a. A declaration that the plaintiff is the lawful owner as proprietor and bonafide holder of all the interest on PLOT NO 14687/I/MN-CR 45411 with an indefeasible title to the said property.**
- b. A permanent injunction against the defendants, their families, agents and or any other person claiming through them restraining them from accessing, staying on, trespassing, maiming and or in any way altering PLOT NO 1468/I/MN-CR 45411.**
- c. An order for eviction of the defendants, their families and or agents from PLOT NO 14687/I/MN-CR 45411 and grant of vacant possession of the said property to the plaintiff.**
- d. An order for eviction for the demolition and removal of all and any structures whether permanent or temporary erected on to the said property by the defendants at their own costs.**
- e. General damages for loss of use of PLOT NO 14687/I/MN-CR 45411**
- f. Costs of this suit.**
- g. Any other relief this Honourable Court may deem fit to grant.**

2. The pleadings were served upon the defendants through their last known address. However they did not enter appearance or file any defence. The plaintiff proceeded to prove his case via formal proof on 19.12.16. The plaintiff produced in evidence copies of title in respect of the suit property showing that he is the registered owner.

3. The witness gave a history of how he acquired this land, that he inherited it from his grandfather. Subsequently he subdivided it into six portions with the defendants being in the portion numbered as 14687/I/MN – CR 45411. The plaintiff also said that before filing this suit, he had sought unsuccessfully

the assistance of the area chief and the O.C.S Bamburi Police Station. He gave the O.B number of the report made and produced a copy of the letter dated 1st November 2012 written by the assistant chief. The assistant chief's letter confirms the invasion of the plot stating that the invaders acted "**very furiously and arrogantly.**" The plaintiff also produced in evidence a letter dated 5th March 2014 written by the defendants to the plaintiff's advocate demanding to be supplied with title documents.

4. From the evidence on record, I am therefore satisfied that the plaintiff has proved that he is the owner of the suit property. He did this by producing the title documents in his name. I am also satisfied that the plaintiff has proved that the defendants have invaded his land. This is corroborated by the letter written by the assistant chief who stated that he visited the suit property and found the invaders who were arrogant and furious. They refused to listen to him hence he referred the plaintiff to seek the assistance of the office of the County Commissioner and later the police. The witness narrated to Court that none of these officers could assist him thus necessitating the filing of this suit.

5. This evidence has not been challenged. Neither was there any evidence presented that the plaintiff's title is being questioned. Since he is the registered owner of the land, he is entitled to enjoy its use and occupation in accordance with the provisions of article 40 (1) & (2) of the Constitution and section 25 (1) of the Land Registration Act. Section 25 (1) provides thus, "**The rights of a proprietor whether acquired on first registration of subsequently for valuable consideration or by an order of Court shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor together with all privileges and appurtenances belonging thereto free from all other interests and claims whatsoever.**"

6. In light of the fact that no one is questioning the plaintiff's title and given the fact that he has not consented to the defendants staying on this land, I make a finding that he is entitled to the prayers **a – d** of the plaint. In terms of prayer **(e)** I award him a sum of Kshs 100,000= because he would not have filed this suit had the defendants listened to him from 2012 when he started asking for vacant possession of the land. I also award him costs of this suit.

Dated, signed & delivered at Mombasa 26th this April 2017

A. OMOLLO

JUDGE