



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC NO.13 OF 2014

EVANSON KAMAU WAITIKI..... PLAINTIFF/APPLICANT

-VS-

OMAR MOHAMED OMAR..... DEFENDANT/RESPONDENT

JUDGEMENT

The plaintiff has filed this suit against the defendant seeking:

- a) A declaration that the defendant is a trespasser upon the plaintiff's property TITLE NO.CR.22058 -LR NO.MAINLAND NORTH/III/1694.**
- b) An order for the eviction of the defendant from the plaintiff's property TITLE NO.CR.22058 -LR NO.MAINLAND NORTH/III/1694.**
- c) Mesne profits.**
- d) Costs of the suit.**
- e) Interest thereon.**

The defendant who was duly served with summons to enter appearance and copies of plaintiff entered appearance and filed a statement of defence. The plaintiff through his application dated 15th April 2014 sought to have the defence struck out for failing to disclose a reasonable defence.

The application was allowed vide a ruling dated 19th December 2014 by Honourable Judge Omollo. This matter was then fixed for formal proof. The plaintiff told the court that he bought the suit property on 5/10/2012. He said he bought it through public auction. The same had been advertised by M/S Regent Auctioneers. He attended the auction and was the highest bidder.

He was issued with a certificate of sale dated 8/10/2012 and subsequently a transfer in his favour on 5/12/2012 between him and Barclays Bank of Kenya Limited.

He was issued with a certificate of title on 14/12/2012.

He further told the court that he is not in possession since the defendant is still occupying the property.

By a letter dated 14/12/2013 the defendant pleaded to be given time to move out. He promised to move out by 13th march 2013 to date the defendant has failed to move out. He prays that the defendant be compelled to move out of the property. He also told the court that he does not wish to pursue the prayer for mesne profits.

He produced the Newspaper advertisement as exhibit P1, the certificate of sale as exhibit P2, deed of indemnity as exhibit P3, and transfer by charge exhibit P4, copy of certificate of title as exhibit P5 and the letter dated 14/12/2013 as exhibit P6.

The defence having been struck out the plaintiff's story has not been controverted. I find that the plaintiff has made out a good case. I enter judgment in his favour as prayed and the plaint namely:

a) That a declaration is hereby issued that the defendant is a trespasser upon the plaintiff's property TITLE NO.CR.22058 -LR NO.MAINLAND NORTH/III/1694.

b) That an order do hereby issued for the eviction of the defendant from the plaintiff's property TITLE NO.CR.22058 -LR NO.MAINLAND NORTH/III/1694.

c) Costs of the suit

d) Interest thereon

Orders accordingly

L. KOMINGOI

JUDGE

13/4/2017

Judgment dated and delivered in open court on the 13th April 2017 in the presence of Ms. Wafula for Mr. Maondo for the plaintiff and court assistant Koitamet

L. KOMINGOI

JUDGE