



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
LAND CASE NO 320 OF 2015

KEY WEST INVESTMENTS LIMITED.....PLAINTIFF/APPLICANT

VERSUS

- 1. MAMA SHABANI**
- 2. JONES MWABILI**
- 3. MR. DOGO**
- 4. THOMAS MWAMBIRI**
- 5. MWANAHAWA HASSAN**
- 6. JOSPEHAT KARIUKI GANGARA**
- 7. JUMA MWINYI POMBE**
- 8. PETER MWASI JUMA.....RESPONDENTS/DEFENDANTS**

JUDGMENT

1. This plaintiff has filed this suit against the defendants for

a) A declaration that the plaintiff is the rightful and/or lawful owner of all that parcel of land known as plot Number MN/V/1810 ("THE SUIT PROPERTY") and they are entitled to exclusive and unimpeded right of possession and occupation of the suit property.

b) A declaration that the defendants whether by themselves, their servants, agents or otherwise, howsoever are wrongfully in occupation of the suit property and are accordingly trespassers on the same.

c) A permanent injunction restraining the defendants whether by themselves, their servants, agents, employees or through anyone deriving title through them or otherwise howsoever from selling, transferring, charging, leasing, depositing building materials creating further structures and/or in any other manner whatsoever dealing or interfering with the suit property.

d) A mandatory injunction compelling the defendants to demolish and remove the structures

erected on the suit property failing to which the plaintiff be authorized to demolish structures at the defendants' expense.

e) Vacant possession.

f) General damages for trespass.

g) Cost of this suit and interest at such rate and for such period of time as this Honourable Court may deem it to grant.

h) Any such other or further relief as this Honourable Court may deem appropriate.

2. The plaintiff was not able to effect personal service on the defendants because they were hostile. The plaintiff then filed an application dated 7th November 2016 seeking leave to serve the defendants by way of substitute service. On 8th November 2016 the court granted leave. The defendants were then served through an advertisement in the Daily Nation of 21st January 2017.

3. Despite this service the defendants neglected to enter appearance and/or filed defence within the prescribed period. The suit was then set down for hearing.

4. Francis Munyao Mulinge one of the directors of the plaintiff told the court that they own **PLOT NO/MN/V/1810** situated at Miritini. He told the court that they bought it from one Alexander Mwendwa Mwova for Kshs.15 million. That the transfer was duly effected in their favour. He produced copy of the title deed as exhibit –P1. He further told the court one year later, the defendants invaded the said plot and started constructing temporary houses. A bundle of photographs of the scene were produced as exhibit – P2. The defendants have been asked to leave but they have threatened the plaintiff's directors with dire consequences. He produced a demand notice as exhibit-P3. He prays that the defendants be compelled to leave the plot.

5. The plaintiff's case has not been controverted. The title deed confirms the plaintiff is the owner of the suit property.

6. I find that the plaintiff has made out a good case against the defendants on a balance of probabilities. However, the plaintiff has made a claim for damages for trespass and the resultant loss there from. They made a no attempt to address the court on this. They made no attempt to tabulate the loss which may have resulted from these trespass. It is my view that it may prove difficult if not impossible to recover any damages the court may award.

7. As a court I would be reluctant to make orders in vain. I decline to award damages.

Accordingly judgment is entered in the plaintiff as against the defendants as follows:

a) A declaration is hereby issued that the plaintiff is the rightful and/or lawful owner of all that piece of land known as plot number MN/V/1810 and that they are entitled to exclusive and unimpeded right of possession and occupation of the suit property.

b) A declaration is hereby issued that the defendants whether by themselves, their servants, agents or otherwise, howsoever are wrongfully in occupation of the suit property and are accordingly trespassers on the same.

c) A permanent injunction do hereby issue restraining the defendants whether by themselves, their servants, agents, employees or through anyone deriving title through them or otherwise howsoever for selling, transferring, charging, leasing, depositing building materials, creating further structures and/or in any other manner whatsoever dealing or interfering with the suit property.

d) A mandatory injunction is hereby issued compelling the defendants to demolish and remove the

structures erected on the suit property failing to which the plaintiff is hereby authorized to demolish and remove the said structures at the defendants expense.

e) Vacant possession.

f) Costs of the suit and interest.

Dated and signed on the 29th day of June 2017 at Mombasa.

L. KOMINGOI

JUDGE

29/6/17

Judgment dated and delivered in open court on the 29th day of June 2017 in the presence Ms. Kimuli for Ms, Ngigi for the plaintiff and the court assistant Koitamet.

L. KOMINGOI

JUDGE

29/6/17