



REPUBLIC OF KENYA



KENYA LAW
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**Chumbani Sudi v Franklyn Mramba (Civil Case 293 of 2012)
[2017] KEELC 3859 (KLR) (18 July 2017) (Judgment)**

Chumbani Sudi v Franklyn Mramba [2017] eKLR

Neutral citation: [2017] KEELC 3859 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**

CIVIL CASE 293 OF 2012

AA OMOLLO, J

JULY 18, 2017

BETWEEN

CHUMBANI SUDI PLAINTIFF

AND

FRANKLYN MRAMBA DEFENDANT

JUDGMENT

1. The plaintiff herein commenced her suit vide her plaint dated 10th December 2012 against the defendant seeking judgement in the following terms:
 - (a) Eviction of the Defendant from the suit property.
 - (b) Permanent injunction restraining the Defendant from interfering in any way with the suit property.
 - (c) Costs of this suit
 - (d) Interest on (c) above at Court rates
 - (e) Any other or further relief as this Honourable Court may deem fit.
2. She pleaded that she is the registered owner of parcel of land No 565 Mikanjuni Squatter Settlement Scheme. That the defendant encroached on this plot sometimes in 2010 by constructing structures where he runs a woodwork workshop and garage. In spite of demand, the defendant has failed and/or ignored to peacefully offer vacant possession. Alongside the plaint, the plaintiff also filed her list of documents to support her case. The defendant was served with these pleadings and summons to enter appearance on 22nd February 2014 but he failed to enter appearance. The plaintiff proceeded to request for judgment which was endorsed by the deputy registrar of this Court on 28th May 2014.



3. The plaintiff proceeded to prove her case by adducing evidence on formal proof on 13th October 2015. The plaintiff stated that she had given the defendant a place to do carpentry works then later he built a workshop. The witness said she had first let out this place to Mike before the defendant came. That the defendant started building vibandas and machine for carpentry without her permission. She asked the defendant to move out but he refused. She produced to Court documents to show the plot belongs to her.
4. The witness continued that the district surveyor came to the land and took the measurement. She produced the survey report dated 17th November 2010 as Pex 5 and the sketch map as Pex 6. She urged the Court to assist her remove the defendant. She also prayed for costs of the suit.
5. The plaintiff through her counsel on record filed written submissions which I have read and considered. From the evidence adduced, the plaintiff admits that she gave the defendant permission to use her plot for carpentry business. However the defendant went beyond their agreement and constructed vibandas against the will of the plaintiff. The plaintiff asked him to remove and or demolish the illegal structures vide the demand letter dated 18th July 2011 filed in Court. The plaintiff also reported this matter to the area chief but the defendant refused to remove the offending structures.
6. The defiance of the defendant made the plaintiff to engage the services of a surveyor who visited the plot and established the extent of the encroachment as 17.61 M². The District Surveyor also replaced the missing beacons. This evidence is contained in the report of the surveyor produced as Pex 5 and 6. The plaintiff has therefore satisfied this Court that she owns plot No 565 in Mikanjuni Settlement Scheme. She has also proved that indeed there is encroachment and its extent measuring 17.61 M². Before filing this case, she made efforts to have the defendant remove the offending structures which efforts the defendant failed to heed.
7. The plaintiff therefore filed this suit to get assistance from the Court. The defendant still did not bother to come and explain why he is occupying the plaintiff's portion of land without her permission. The actions of the defendant amounts to trespass, is illegal and must not be condoned. He is denying the plaintiff the opportunity to fully utilize her land as envisaged under article 40 of *the Constitution* and Section 24 & 25 of the *Land Registration Act*. Accordingly I enter judgement in favour of the plaintiff in terms of prayer (a), (b) and (c) of the plaint. The defendant is given 30 days to remove the offending structures in default, the plaintiff do use lawful means to evict him forthwith and recover the costs if any of the eviction exercised.

DATED, SIGNED & DELIVERED AT MOMBASA THIS 18TH DAY OF JULY 2017.

A. OMOLLO

JUDGE

