



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

CIVIL SUIT NO 302 OF 2014

- 1. ROBERT ADONGO NYABOLA ALOO**
- 2. MARTIN SULUBU KIRAGA**
- 3. GRACE WAKIO SCAVER**
- 4. SALIM MOHAMED PANDU**
- 5. ALI HAMISI KOMBO**
- 6. HADJI MFAUME YUSUF**
- 7. SALIMINI MFAUME YUSUF**
- 8. JUMA CHARO KARISA**
- 9. JOSEPH MUKUNGA NDIRITU**
- 10. HASSAN ALI MAGENDO**
- 11. ALI SHANTE MOHAMED**
- 12. MUTINDI MAVUTI**
- 13. JAMES NG'ANG'A KAMAU**
- 14. MWIKABA AQUILINE MAGHENDA.....PLAINTIFFS/APPLICANTS**

VERSUS

- 1. JUMA KISAGA**
- 2. MWINYI KISAGA.....DEFENDANTS/RESPONDENTS**

JUDGEMENT

1. The plaintiffs have filed this suit against the defendants jointly and severally seeking;
 - a) An order of permanent injunction to restrain the Defendants whether by themselves, their

servants agents or otherwise whosoever, from interfering with the plaintiffs' quiet enjoyment and uses of their respective portions of land and a declaration that the plaintiffs are the lawful owners of their respective portions of land within Plot Number, 375/1/MN.

b) An order upon the Defendants be issued to cease intimidating, threatening, interfering, surveying, subdividing, demolishing, evicting and/or increasing any further amounts of money in addition to the agreed purchase price in consideration for respective portions therein Plot Number 375/MN/I.

c) Costs of the suit.

d) Interest thereon at court rates.

e) Any other relief this Honourable Court may deem fit and just to grant.

2. The Defendants were duly served with copies of plaint and summons to enter appearance. They neglected to file a Memorandum of Appearance and/or defence within the prescribed period.

Interlocutory judgement was entered against the defendants on 23/3/2017 and the matter was set down for formal proof.

3. I have gone through the Plaintiffs' advocates submissions they refer to interested parties. I have gone through the court record. I note that on the 3/3/2017 there was an application by the interested parties to be enjoined in this suit. The said application was never prosecuted. The said "interested parties" were therefore not enjoined to the suit. This judgment is therefore in respect of the fourteen (14) Plaintiffs.

4. On the 22/6/2017 the 5th and the 12th Plaintiffs testified. On the application by the Plaintiffs' advocate, the court adopted the witness statements of the other Plaintiffs as part of their evidence.

5. P.W.1 Mutindi Mavuti told the court that he bought the portion of land from the Defendants. He produced an agreement for sale of land as exhibit –P1. He further told the court that he has constructed two houses, one which is his residence and another which is for renting out.

He stated that he has been paying rates to the county government of Mombasa. He produced a copy of the receipt as exhibit P2. He told the court that the Defendants have not facilitated him to be issued with a title deed to date. He prays that they be compelled to do so and to give him quiet possession of the property.

6. P.W.2 Hamisi Ali confirmed what P.W.1 told the court. He produced his copy of the agreement of sale of land as exhibit –P3. He also confirmed that he has not enjoyed quiet possession as the Defendants keep disturbing him. He produced a receipt confirming payment of the rates to the county government of Mombasa as exhibit – P4.

7. I have gone through the statements of the other Plaintiffs. Their claim is basically the same as that of the 5th and 12th Plaintiffs. The plaintiffs' case has not been controverted. I have considered the pleadings and the exhibits produced.

I am satisfied that the Plaintiffs have demonstrated that they bought their respective portions of land. I find that they have proved their case as against the Defendants on balance of probabilities.

8. I accordingly enter judgment in the Plaintiffs' favour as against the Defendants jointly and severally as follows;

a) That an order of permanent injunction is hereby issued to restrain the Defendants whether by themselves, their servants or agents or otherwise whosoever, from interfering with the Plaintiffs' quiet enjoyment and use of their respective portions of land.

b) That a declaration is hereby issued that the Plaintiffs are the lawful owners in their respective portions of land within plot number 375/ /MN/I.

c) That an order is hereby issued upon the Defendants to cease intimidating, threatening interfering, surveying, subdividing, demolishing, evicting the Plaintiffs and/or increasing any further amounts of money in addition to the agreed purchase price in consideration for respective portions there in Plot Number 375/MN/I.

d) Costs of the suit to be borne by the defendants.

It is so ordered.

L. KOMINGOI

JUDGE

4/10/2017