



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**ELC CASE NO. 257 OF 2016**

BERNHARD RAU.....PLAINTIFF

-VERSUS-

SAMUEL KAZUNGU MRAMBA.....1<sup>ST</sup> DEFENDANT

JOSHUA SIFA KAZUNGU.....2<sup>ND</sup> DEFENDANT

**JUDGEMENT**

1. The plaintiff who described himself as a German Citizen sued the two defendants who are siblings vide his plaint dated 14<sup>th</sup> September 2016 and filed in Court on the same date. The plaintiff sought several reliefs inter alia:

- a) A declaration that the plaintiff is the lawful owner and entitled to immediate possession of the apartments erected on plot measuring 50 feet x 80 feet bought from Daniel Mbogho Kalume situate in Mtwapa.
- b) A declaration that any purported collection of rent from the apartments by the defendants, their agents, servants licencees and or any other person acting or purporting to act on their behalf be declared null and void and of no effect.
- c) A permanent injunction restraining the defendants whether by themselves, their assigns, agents, servants licencees and or any other person acting or purporting to act on their behalf (or any one of them) from entering, occupying, nor in any way dealing with the suit apartments.
- d) A mandatory order allowing the plaintiff, his servants, agents, assigns, licensees unlimited accessibility to the apartments.
- e) A mandatory order compelling the defendants to produce all the financial statements and accounts of rent collected from January 2015 to date together with interest thereon which money should be passed over to the plaintiff.
- f) A mandatory eviction order against the 1<sup>st</sup> defendant from the suit apartments.
- g) Damages for the loss and damages suffered by the plaintiff and interest thereon at such rate and for such period as this Honourable Court deems just.

## **h) Costs of and incidental to this suit.**

2. The suit papers were served upon the 1<sup>st</sup> defendant on 27<sup>th</sup> September 2016 at about 4.30 pm in the suit premises located at Mtwapa township according to the affidavit of service deposed by Nickson Nuyange Rodgers sworn on 24.11.16. That the 1<sup>st</sup> defendant received the documents on his behalf and on behalf of the 2<sup>nd</sup> defendant who is averred to have been away at the time. Both defendants did not enter appearance within the prescribed time. As a result the plaintiff prayed for and obtained interlocutory judgement against them which interim judgement was endorsed by the deputy registrar on 6<sup>th</sup> March 2017.

3. On 9<sup>th</sup> October 2017, the matter proceeded for formal proof with the plaintiff calling two witnesses in support of his case. The plaintiff who testified as PW 1 adopted his statement filed in Court together with his bundle of documents as exhibits. Included in his bundle of documents is a sale agreement dated 28<sup>th</sup> February 2013 between him & Daniel Mbogo Kalume for the purchase of a portion of land measuring 80 feet by 50 comprised in title No MN/III/3839/8. Before the sale, these two parties had entered into what is referred to as a tenancy agreement dated 17.1.1998 which permitted the plaintiff to develop the land for as long as he paid ground rent.

4. The plaintiff also annexed several correspondences and emails he exchanged with the defendants regarding help or loans the defendants sought from the plaintiff. At page 36 of the bundle is a demand letter from Geoffrey T. S, & Co Advocates dated 4.2.2015 terminating the defendants as agents for collecting rent on behalf of the plaintiff. This notice seemed not to have yielded any fruit hence the filing of this suit.

5. The evidence of PW 2 was merely to corroborate the evidence of PW 1 that PW 1 is the owner of the apartments occupied by the defendants and that the defendants have denied the plaintiff access and rental income. The evidence of PW 1 and PW 2 have not been challenged.

6. The right for any person to own property in any part of Kenya is enshrined under article 40- (1) of the Constitution. Non – citizens are also allowed to own property subject to the provisions of article 65 of the Constitution. Under article 65 it gives non – citizens rights to own property on leasehold tenure terms. Therefore the supreme law of our land allows non-citizens such as the plaintiff to own property in any part of Kenya, the Coast region included. This right conferred upon the plaintiff is expanded by legislation in section 25 (1) of the Land Registration Act which provides that rights of a proprietor whether acquired on first registration or **for valuable consideration** or by an order of Court shall not be liable to be defeated except as provided in the Act and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto free from all other interests and claims.

7. In this instance, no evidence to the contrary has been shown why the plaintiff should not enjoy these rights bestowed on him by law as a proprietor. Consequently this Court does enter judgement in his favour to enable him enjoy the privileges and the sweat of his investments by allowing his claim in terms of prayers (a), (b), (c), (d), (e) and (f) of the plaint. It is also my finding that once prayer (e) is complied with, there is no need to award prayer (g) of the plaint. The costs of the suit is also awarded to the plaintiff.

**Dated, signed & delivered at Mombasa this 30<sup>th</sup> November 2017.**

**A. OMOLLO**

**JUDGE**