



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

LAND SUIT NO. 168 OF 2016

RENSON MWAMBELA KIMBICHI.....PLAINTIFF/APPLICANT

VERSUS

MWAWASI MWAITA.....DEFENDANTS/RESPONDENTS

JUDGMENT

1. The Plaintiff has filed this suit against the Defendant seeking;
 - a. A declaration that all that parcel of land known as Title No. Mbale/Msau/Shigharo/146 belongs to the Plaintiff who is entitled to exclusive and unimpeded possession and occupation of the suit property.
 - b. A permanent injunction restraining the Defendant whether by himself, servants and/or agents from remaining and/or continuing in occupation of the suit property.
 - c. Vacant possession of the suit property.
 - d. General damages for trespass.
 - e. Costs of the suit.
2. The plaint is accompanied by a verifying affidavit sworn by Renson Mwambela Kimbichi on the 17th June 2016.
3. The Defendant who was duly served with summons to enter appearance and copies of plaint neglected to enter appearance and or file defence within the prescribed period.
4. Interlocutory judgment was then entered and the matter proceeded to formal proof.
5. It is the Plaintiffs case that on the 17th December 2008 he was registered as the absolute proprietor of land parcel number Mbale/Msau/Shigharo/146. He was then issued with a title deed.
6. That he recently visited the suit land and found the Defendant has trespassed on the same and was cultivating and/or tilling the same. He asked the Defendants to vacate but he (Defendant) became harsh and threatened to beat him up.
7. He made a report at Mwatate Police Station and Chief's office Mwatate division. He also made a report at the ministry of Lands Taveta district. The Defendant was summoned to the Chief's office, Kishamba location but the Defendant neglected to attend.
8. The Plaintiff then instructed his Advocate to write a demand letter to the Defendant. It was produced as an exhibit in this case.
9. The Plaintiff filed a list of documents dated 17/6/2016 which includes;
 - a. Demand letter dated 11/11/2015.
 - b. Copy of title deed to Title No. Mbale/Msau/Shigharo/146.

- c. Kishamba location Chief Dispute Resolution Minutes dated 3/11/2015.
- d. Copy of letter dated 29/9/2015 from Chief Kishamba Location to OCS Mwatate Police Station.
- e. Copy of certificate of official search dated 22/7/2015 over Title No. Mbale/Msau/Shigharo/146.

They were produced as exhibits P1-P5 respectively.

10. The Plaintiff's case has not been controverted. I find that he has made out his case against the Defendant on a balance of probabilities.

11. Accordingly, judgment is entered in favour of the Plaintiff as against the Defendant as follows;

- a. A declaration be and is hereby issued that all that parcel of land known as Title No. Mbale/Msau/Shigharo/146 belongs to the Plaintiff who is entitled to exclusive and unimpeded possession and occupation of the suit property.
- b. A permanent do hereby issue restraining the Defendant whether by himself, servants and/or agents from remaining and/or containing in occupation of the suit property.
- c. Vacant possession of the suit property.
- d. The court was not guided on what loss the Plaintiff had incurred I decline to grant any damages under this head.
- e. Costs of the suit and interest.

It is so ordered.

Dated, Signed and Delivered at Mombasa on the 6th day of December, 2017.

L. KOMINGOI

JUDGE

6/12/2017