



REPUBLIC OF KENYA
IN THE LAND AND ENVIRONMENT COURT
AT MOMBASA
CIVIL CASE NO. 560 OF 2011

**KOMBO HASSAN KOMBO (Suing as the Administrator
of the Estate of MWISHAHALI KOMBO MWINYIHAJIPLAINTIFF**
- V E R S U S -
OMAR SAID ABDALLA DEFENDANTS

JUDGEMENT

[1] The plaintiff brought this suit against the defendant claiming that the defendant has encroached on the plaintiff's plot no. 194 Section V M N He argues that the defendant has remained on the suit property as a trespasser and has continued to maintain his illegal structures erected thereon despite evidence of ownership presented to him by the plaintiff and the Government Surveyor thereby denying the plaintiff quiet possession use and enjoyment of the suit property.

[2] On 21st October 2011 the defendant was served with summons to enter appearance, plaint, verifying affidavit and a list of the plaintiffs' witness. He received the documents and declined to sign for the same. The Plaintiff requested for judgment on 1st December 2011. Judgment was entered on 19th January 2012 for failure to enter appearance. This case came before me for formal proof on 24th June 2013. The plaintiff said that he is the administrator of the estate of Kombo Mwinyi Haji who owned a piece of land known as Plot 194/V/MN. He produced a title of the same. He stated that the defendant has encroached on the said plot. That he has built on a portion of the same. That the plaintiff tried to sort out the issue through the Chief of the area to no avail. Further that he called a Surveyor who came and took measurements and said the defendant has encroached on the plaintiffs land. Even then the defendant refused to move and vacate out of the said land.

The plaintiff produced a grant of the letters of administration, the death certificate, a copy of the title, a demand notice and a letter from the Surveyor to prove his claim.

[2] He called Mr. Wallid Abssa Omar as his witness. The witness said that he works with the Survey department. He said that he surveyed Plot 63 Jomvu Kuu 555. The Scheme borders plot no. 194. He said that he found Plot No. 104 had a house encroaching by 47.67 Square meters encroaching plot no.

194. He prepared the sketch. He said that he informed Omar Said Abdalla the plaintiff herein of the report.

That Omar Saidi Abdalla is the plaintiff herein who is the owner of number 3 in Jomvu Kuu Scheme.

[3] The defendant herein though served did not enter appearance or defence. The evidence of the plaintiff is not controverted in any way. I am on a balance of probabilities convinced that the plaintiff has proved his case.

I order that,

(a) a permanent injunction do issue to restrain the defendant from entering into and remaining on and upon the plaintiffs property known as plot no. 194 Section VM.

(b) That a mandatory injunction compelling the defendant to demolish his structures erected and stand in on and upon the plaintiffs property known as Plot No. 194 Section VMN and in default the plaintiff to undertake the same at the cost and expense of the defendant.

(c) No damages for trespass were proved before me and none will be awarded.

(d) The plaintiff shall have costs of the suit and interest from filing of the suit.

Dated and delivered in open Court at Mombasa this 18th day of

October, 2013.

S.N. MUKUNYA

JUDGE

18.10.2013

In the presence of:

Khatib Advocate for the plaintiff

No appearance for the defendant