



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 201 OF 2009

1. **MOMBASA MOTOR VEHICLES SALES LTD**
2. **ROSHANZAMEER ALI MOHAMED KASMANI**
3. **MUSHTAQ AHMED ALI MOHAMED KASMANI**
4. **KULSUMBHAI & ALI MOHAMED ESSA CHARITABLE TRUST**
5. **SALIM SHAMSHUDEEN ESSA KASMANI**
6. **SHAMSHUDEEN ESSA KASMANI PLAINTIFFS**

-V E R S U S-

JANE KAVITI NZIOKA DEFENDANT

JUDGMENT

1. The Plaintiffs are co-owners of **Title No. Mbsa/Block XIX/125**. They rented that property to Asia Trans Trading Company (K) Ltd, by a lease of five (5) years and three (3) months commencing 1st December 2003.
2. The Plaintiffs have sued the Defendant seeking an order for the Defendant to give vacant possession of the suit property. The Plaintiffs also seeks an order for the Defendant to pay mesne profit from 1st June 2007 until vacant possession at the rate of Kshs. 44,322/- per month.
3. When the case came up for hearing the Defendant did not tender evidence and accordingly the Plaintiffs evidence remains unchallenged. The Plaintiffs evidence was that Asia Trans Trading by its Board resolution dated 4th May 2007 resolved to dissolve Asia Trans Trading. It is to be noted that by that resolution there was a confirmation that Asia Trans Trading had ceased trading for a number of years and had no assets. By a letter dated 4th May 2007 the Registrar of Companies was requested to strike out the said company from the register as per the Companies Act. By a Gazette Notice No. 4320 of 11th May 2007 the Registrar of Companies gave notice of three (3) months to strike out Asia Trans Trading from the register.
4. It is the Plaintiffs' case that with effect from June 2007 the suit property was no longer occupied by Asia Trans Trading. It is further the Plaintiffs evidence that the Defendant who was the Company's Secretary of that Company continued to occupy the suit property from that date and has continued to so occupy to date despite several requests to give vacant possession.
5. The Plaintiffs witness stated in evidence that the Defendant had filed a case being **Mbsa HCC**

No. 260 of 2007. By that suit the Defendant sought an order that the Plaintiffs be compelled to accept her rent in respect of the suit property. By a ruling dated 23rd June 2008 in that matter the Court dismissed the Defendant's said suit and made a finding that the Defendant was not a tenant of the Plaintiffs. The Court stated in that ruling as follows-

“She (Jane Kaviti Musyoka) is not the tenant save that she is a Director and a share holder of the 2nd Plaintiff (Asia Trans Trading).”

There has not been an appeal filed challenging that finding and I am therefore bound by that finding of fact. Additionally the Plaintiffs have shown by various correspondences that they had a clear intention of not letting the Defendant take over the suit property from Asia Trans Trading.

6. I therefore make a finding that the Defendant is a trespasser of the suit property from June 2007 to date. The Plaintiffs are therefore entitled to the claim of mesne profit and vacant possession as claimed.
7. The Court grants judgment for the Plaintiff as follows-
 - a. **The Defendant shall give vacant possession of Title Mbsa/Block XIX/125 within seven (7) days from this date hereof. In default an order of eviction of the Defendant from Mbsa/Block XIX/125 shall hence forth issue.**
 - b. **The OCS of the Police Station near Title Mbsa/Block XIX/125 shall give assistance for the eviction of the Defendant to ensure that peace and order is maintained.**
 - c. **The Plaintiff is awarded Kshs. 4,190,553/- being the mesne profit from June 2007 to November 2013 and that amount shall continue to accrue at the rate of Kshs. 63,356/- per month until vacant possession.**
 - d. **The Plaintiff shall pay to the Court extra filing fees before undertaking execution of this judgment.**
 - e. **The Plaintiff is awarded costs of this suit and leave is hereby granted to the Plaintiff to proceed with execution before taxation.**

Dated and delivered at Mombasa this 19th day of December, 2013.

MARY KASANGO

JUDGE



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