



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NUMBER 457 OF 2010

HARRISON MWAMBURI HUSSEIN.....PLAINTIFF

-VERSUS-

1. JARED MWANDISHA ALLEN].....DEFENDANTS
2. NATHANIEL LANGALI ALLEN]

JUDGMENT

[1] The plaintiff in this case prays for orders

(a) An order that the parcel of land comprised in a free hold known as Werugha/Werugha/1421 measuring 2.4 Hectares situated at Werugha within Taita District is lawful property of Plaintiff and the Defendants have no right to occupy or claim portions of the same.

(b) An order that the Defendants should be evicted from the parcel of land known as Werugha/Werugha/1421 together with all his properties and all house and structures erected or occupied by them should be demolished at their cost.

(c) A permanent injunction be issued restraining the Defendants by themselves, servants or agents or otherwise howsoever from further entering upon the parcel of land known as WERUGHA/WERUGHA 1421 or from remaining in possession of the same or any par or portion thereof, from cultivating the same and or from interfering with the Plaintiff's occupation of the same in any manner and his proprietary rights over the same.

(d) An order that all cautions, restrictions and or inhibitory orders registered upon the register of the parcel of land known as Werugha/Werugha/1421, be removed

[2] The plaintiff avers that the defendants herein are his brothers. That they were living within the portion of ancestral land given to the plaintiff and that there was an agreement that they would move to the portions given to them so that the plaintiff could have exclusive possession of his portion. This was

during the life time of their deceased father.

[3] It stated that the defendants however refused to move and vacate out of the plaintiff's portion Werugha/Werugha/1421. It is equally stated that they occupy the 2nd property while they are still cultivating their own portions. The plaintiff contends that he has made various efforts to evict the defendants from his parcel to no avail.

The plaintiff explained to court in detail how he was given 4.01 acres. He produced a title deed which was in his name. He explained how the 1st defendant and 2nd defendant were given 4.2 acres each. He explained how he bought extra land whose accumulative acreage was 1.8 acres, that added with 4.1 acres he received from his father, gave him a total of 4.9 acres. He explained that before demarcation and consolidation of the lands, him and his father and brothers and family were living on the portion of 4.1 acres. That initially the separate pieces were in his father's name but that later the three brothers were called and they went to Wundanyi Land Control Board, each was given his separate portion of land.

[4] He produced an official search of his piece Werugha/Werugha/1421. He also produced the search certificate of the 1st defendant land of 1.8 hectares and one for the 2nd defendant of 1.2 hectares title Werugha/Werugha/1740. The searches show that the 2nd defendant has borrowed money from Barclays Bank with his portion. The plaintiff produced a bundle of letters to show that the matter had once been referred to the Chief. There was no solution found. The defendants refused to move and vacate out of the plaintiff's land forcing him to file this suit. He stated that the defendants had no reason to remain on his land since they had their own land.

[5] The Plaintiff called one Mr. Lenard Amon Mandanda who said he is 70 years old. He stated that he knows the parties to the suit. That he was born in Werugha location in Wundanyi Taita County. That the parties to this case were his uncles. He said that during the land consolidation, demarcation and Registration, he worked as a surveyor assistant. That he witnessed and was a chair assistant and he measured 8.4 acres to the defendants and 5.9 acres to the plaintiffs. That the plaintiff's father was the chairman of the and allocation committee. He stated that the 2nd defendant was a member of the allocation committee and had no problems with the allocation.

[6] The defendants were duly served but they never filed any papers nor attended the court. I have perused the documents produced, particularly the search dated 2nd July, 2013 showing Jared Mwandisha Allen 1st defendant as registered owner of Werugha/Werugha/1735 for 1.8. hectares and Nathaniel Wangoli Allen 2nd defendant as the registered owner of Werugha/Werugha/1740 comprising of 1.2 hectares.

[7] I have also perused the bundle of letters exchanged herein. I am convinced that the Plaintiff has made out a case to enable me to grant him the orders sought in his plaint. I hereby do so. This suit is allowed as prayed.

As these are members of the same family, the defendants are hereby allowed to move out of suit lands within 90 days and move on to their lands aforesaid. If they do so in the time stated herein there shall be no costs to the plaintiff. If they do not do so within the time stipulated the plaintiff shall be at liberty to apply for their eviction. They shall equally pay the costs of such eviction and costs of this suit.

It is so ordered.

Dated and delivered in open court at Mombasa this 21st day of February, 2014.

S.N. MUKUNYA

JUDGE

21.2.2014

In the presence of:

Mr. Wafula Advocate holding brief for E.Njeru Advocate for Plaintiff.