



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. 160 OF 2017

MALCOM GAMBO MBANGO.....PLAINTIFF

VERSUS

CLEMENT LEWA.....1ST DEFENDANT

BAYA KAZUNGU.....2ND DEFENDANT

JUDGMENT

1. By his Plaint dated and filed herein on 20th July 2017, Malcom Gambo Mbango (*the Plaintiff*) prays for Judgment against the two Defendants for:

(a) *A permanent injunction restraining the Defendants, their servants, agents, employees, hirelings and whomsoever acting on their instructions from interfering with the Plaintiff's peaceful and quiet enjoyment of the suit property known as Kilifi/Kibarani/155;*

(b) *A mandatory injunction ordering the demolition of the structure on the suit property known as Kilifi/Kibarani/155 and give vacant possession of the property;*

(c) *Costs of the suit;*

(d) *Interest on (c) above at Court rates; and*

(e) *Any other relief this court may deem fit to grant.*

2. The prayers arise from the Plaintiff's position that he is the duly registered proprietor of the suit property having acquired the same in the year 2009. He accused the Defendants of invading the same without any lawful excuse and erecting illegal structures thereon.

3. Despite service of summons to enter appearance Clement Lewa and Baya Kazungu (*the Defendants*) neither entered appearance nor filed a response to the Plaintiff's claim. The matter therefore proceeded by way of formal proof.

4. Testifying as the sole witness in his case, the Plaintiff told the Court he is a civil servant based in Ganze. The Plaintiff testified that he is the registered proprietor of the suit property measuring approximately 0.8 Ha. having bought the same from one Beja Kalimbo Beja on 14th August, 2009.

5. The Plaintiff told the Court the suit property was previously charged to the Settlement Fund Trustees (SFT) but the same was discharged on 5th September, 2014 before being registered in his name on 14th October, 2006.

6. The Plaintiff told the Court the two Defendants have since invaded the land claiming to have an interest in a portion thereof and have proceeded to construct illegal structures thereon. He told the Court the two have no proprietary interest in the land and that their trespass thereon is unwarranted and that this Court ought to put a stop to the same by ordering the demolition of their illegal structures as well as the eviction of the Defendants therefrom.

7. I have carefully perused and considered the Plaintiff's pleadings, his sole testimony as well as the evidence adduced at the trial. I have also considered the submissions filed herein by the Learned Advocates for the Plaintiff. The Defendants neither entered appearance nor filed any response to the claim despite evidence that they were served with summons to Enter Appearance.

8. The Plaintiff has urged this Court to issue a permanent injunction restraining the Defendants from interfering in any way with his quiet enjoyment of the suit premises. He also prays for an order of mandatory injunction to issue directing the demolition of the structures put up by the Defendants on the suit land as well as an order of vacant possession of the suit premises.

9. From the material placed before me, there was no doubt that the Plaintiff is the registered proprietor of the said parcel of land known as Kilifi/Kibarani/155 measuring approximately 0.8 Ha. He has produced a copy of the Title Deed in his name. To demonstrate how he came to be so registered, the Plaintiff produced in evidence a Sale Agreement executed between himself and one Beja Kalimbo Beja dated 14th August, 2009.

10. The Plaintiff has also produced several other agreements demonstrating how the suit land exchanged hands from the original allottee, one Halima Ngonyo Abdalla to Sidi Samuel Dzitso who in turn sold it to Beja Kalimbo Beja before the Plaintiff acquired the same.

11. The Plaintiff has also tendered in evidence a copy of a receipt showing the payments made to the SFT and a Discharge Notice from the Fund before the property was registered in his name. He has also tendered evidence of a letter dated 24th February 2014 from the Assistant Chief, Kibarani Sub-location indicating the efforts so far made by the Plaintiff to have the matter resolved. Just as in this case, the Defendants failed to turn up at the Chief's Office to have the matter resolved.

12. As it were, **Section 24 of the Land Registration Act No. 3 of 2012** provides thus:

“(a) The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

13. Arising from the foregoing and given that the Defendants have not controverted the Plaintiff's position that they have wrongfully entered the suit property registered under the Plaintiff's name and erected structures thereon, I am persuaded that the Plaintiff's case not only has merit but that the same has been proved on a balance of probabilities.

14. Accordingly I hereby allow the Plaintiff's suit as prayed with costs.

15. The Defendants have 30 days from today to remove their structures from the suit property failure to which the same shall be removed forthwith by the Plaintiff at their cost.

Judgment dated, signed and delivered virtually at Nyeri via Microsoft Teams this 17th day of March, 2022.

In the presence of:

No appearance for the Plaintiff

No appearance for the Defendants

Court assistant - Kendi

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J. O. Olola

JUDGE