



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
LAND CASE NO. 138 OF 2010

HARUN RASHID KHATOR as legal representative of the Estate of
RASHID KHATOR (deceased).....PLAINTIFF

=VERSUS=

- 1. SUDI HAMISI**
- 2. ALII SOMOE BWANA**
- 3. OMAR MOHAMED**
- 4. KHAMISI KHAMIS**
- 5. ZENA HAMISI**
- 6. AMANI HAMIS**
- 7. ALII HAMISI**
- 8. ABDILLAHI SWLEH**
- 9. RIZIKI HAMISI**
- 10. STEPHEN BAYA KAINGU**
- 11. KHAMISI OMAR**
- 12. ATHMAN SWALEH.....DEFENDANTS**

JUDGMENTS

Introduction:

1. On 19th November 2010, the Plaintiff moved this court by way of a Plaint seeking for the following reliefs:

a) An Order of eviction against the Defendants jointly or severally from plot numbers MN/111/3893 and MN/111/2894 situated in Kikambala (the suit property).

b) A declaration that the Defendants are not entitled to remain on the suit.

c) Damages and costs of the suit.

2. The Plaintiff has averred in his Plaint that he is entitled to the possession of the suit property namely, MN/111/3893 AND MN/111/3894 and that the Defendants wrongfully rented the said plots thus denying him rent and mesne profits.
3. The firm of Antony Okuto & Co. Advocates entered appearance for the Defendants on 17th December 2010 but never filed a Defence.
4. The matter proceeded for formal proof on 13th February, 2014. The Defendants, through the firm of Wesley John Austin & Associates filed their joint Defence and counter claim on 7th April, 2014, way after the pre-trial conference and the Plaintiff's case had commenced.

The Plaintiff's case:

5. Pw1 informed the court that the Plaintiff is his brother. It was the evidence of Pw1 that their father, Rashid Khator died on 4th August 2003 and his brother took out the letters of administration. According to Pw1, he is amongst the people who are supposed to benefit from his late father's estate which include plot numbers MN/111/3891, 3892, 2893, 3894 and 240.
6. It was the evidence of Pw1 that the Defendants are occupying MN/111/3891-3894 which belongs to his late father. According to the witness, the Defendants sued the Plaintiff in the year 2008 in Hccc. No. 19 of 2008. In that suit, the Defendants were claiming to be the owners of the suit property by way of adverse possession. The Defendant's suit was dismissed by the trial court.
7. The Plaintiff, Pw2, stated that he is the administrator of the Estate of his late father. The Plaintiff produced the original Letters of Administration Intestate and the Certificate of Confirmation of a Grant as PEXB 1 and 2 respectively.
8. It was the evidence of the Plaintiff that his father was the registered owner of four portions of land known as MN/111/3891, 3892, 3893 and 3894. The Original Certificates of Titles for the said parcels of land were produced as PEXB 4 (a) -(d). The Plaintiff also produced in evidence a certified copy of the Ruling in Malindi Hccc No. 19 of 2008 (OS) in which the Defendants had sued the Plaintiff and his siblings claiming for adverse possession as PEXB3.
9. According to the Plaintiff, the Defendants have unlawfully invaded their land and should be evicted.
10. The Defendants did not testify considering that they filed their joint Defence after the close of pleadings and after Pw1 had testified. The Defendant's advocate did not file any Application to have those proceedings set aside.

Analysis and findings.

11. It is not in dispute that the Plaintiff's late father is the registered proprietor of parcel of land numbers MN/111/3891-3894.
12. According to the Certificates of Titles that were produced in evidence, the said parcels of land were registered in favour of the Plaintiff's late father on 27th August, 2001 as C.R. Numbers 34786, 34785, 34787 and 34784 respectively.
13. I have perused the Ruling of the court in Malindi Hccc. No. 19 of 2008 (OS) in which the Defendants' suit for adverse possession over the same suit property was dismissed by Justice Omondi on 11th June 2009. The Defendants have never filed an appeal against the said Ruling.
14. In view of the Certificates of Titles showing that the Plaintiff's father is the registered owner of the suit properties, namely MN/111/3891 – 3894, I can do no better than quote the Court of Appeal

decision in the case of **Michael Githinji Kimotho -Vs- Nicholas Murathe Mugo, Civil Appeal No. 53 of 1995** in which it was held as follows:

“If the appellant had been in occupation of the suit land as a squatter without any right or title to the suit land in his favour, he was obviously in no position to resist the respondent's claim. Though the Appellant had a long time been in occupation of the suit land which was government land before it was allocated to the Respondent, this would not have helped him in resisting the Respondent's claim where the latter is registered as owner of the land. Similarly, if he, the Appellant, had carried out any development on the suit land, he did so at his own peril and he could not expect any compensation in that respect. Even if for argument sake the suit land had been erroneously allocated to the Respondent, the Appellant as a squatter in the suit land had no *locus standi* and the so-called erroneous allocation could not be an answer to the Respondent's claim for his eviction. His position as a trespasser could not have given him any protection against the respondent's claim for possession as the registered owner of the suit land.”

15. The Defendants have not challenged the legality of the Plaintiff's titles. In the circumstances, the said titles give the Plaintiff the right to exclusively own and possess the suit property as provided for under Article 40 (1) of the Constitution.

16. For the reasons I have given above, I find and hold that the Plaintiff has proved his case on a balance of probabilities. The Plaintiff's claim is therefore allowed in the following terms:

a) An order of eviction against the Defendants from Plot Numbers MN/111/3893 and MN/111/3892, MN/111/2893 and MN/111/3894 be and is hereby issued.

b) A permanent injunction restraining the Defendants whether by themselves, their servants or agents from entering plot numbers MN/111/3891, MN/111/2892, MN/111/3893 and MN/111/3894 be and is hereby issued.

c) The Defendants to pay the costs of the suit.

Dated and delivered in Malindi this 20th day of June, 2014

O. A. Angote

Judge