



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 55 OF 2013

MAHMOUD SAID SALIM.....PLAINTIFF

=VERSUS=

KAHINDI UNDA KOMBE.....1ST DEFENDANT

CHARO GONA NGWARU.....2ND DEFENDANT

J U D G M E N T

Introduction:

1. The Plaintiff sued the two Defendants seeking for a declaration that he is entitled to vacant possession of land known as portion number 634, Mambrui.
2. The Plaintiff has averred in his Plaint that the Defendants have been living on the suit property as squatters together with five others.
3. Although the Defendants were served with the Plaint and Summons to enter appearance on 11th April 2013, they neither entered appearance nor filed their respective defences.

The Plaintiff's case

4. The matter proceeded for formal proof on 3rd December 2013.
5. The Plaintiff, PW1, informed the court that the Defendants are squatters on his father's land known as portion number 634, Mambrui, Malindi.
6. PW1 informed the court that he has the title document showing that the suit property is registered in the name of his late father. PW1 produced the letters of administration as PEXB 1 and a copy of the Certificate of Title as PEXB 2. The Deed Plan in respect to the suit property was produced as PEXB 3.
7. According to PW1, at some point, there were fourteen (14) squatters living on the suit property. It was the evidence of PW1 that he agreed with the squatters including the Defendants that he was to give them a portion of the land. PW1 produced the agreement he entered into with the squatters as PEXB 4.

8. Although the rest of the squatters left the suit property as per the agreement, PW1 informed the court that the Defendants refused to vacate the land.

9. It was his evidence that the trees which the Defendants had planted on the suit property were assessed by an agricultural officer and the Chief of the area directed that the Defendants were only entitled to the value of the trees. PW1 produced a letter from the chief as PEXB 5. However, the Defendants have refused to receive Kshs.40,400 which is the value of the trees that are on the suit property.

10. The Plaintiff's advocate filed submissions which restated the evidence adduced by the Plaintiff.

Analysis and findings:

11. The Plaintiff produced in evidence the Certificate of Title for land known as portion number 634 Mambrui measuring 9.34 Ha. The title shows that the suit property was registered in the name of the Plaintiff's father, now deceased, on 23rd December 1998.

12. The Plaintiff also produced an agreement between himself and the Defendants in which the Defendants agreed to be allocated half an acre each on the suit property. An assessment report of the value of the trees that the Defendants had planted on the suit property was also produced in evidence.

13. However, the Defendants have since refused to move out of the suit property despite having agreed to leave.

14. The Plaintiff's evidence is uncontroverted. The Plaintiff's father being the registered proprietor of the suit property is entitled to the same and the Defendants should give way. The Defendants do not have any right known in law over the suit property.

15. For those reasons, I allow the Plaintiff's Plaint dated 26th March 2013 in the following terms.

(a) A declaration be and is hereby issued that the Plaintiff is entitled to vacant possession of land known as portion number 634, Mambrui.

(b) The Defendants be and are hereby ordered to vacate land known as portion number 634, Mamburi.

(c) A permanent injunction be and is hereby issued restraining the Defendants by themselves, or through their employees, agents or otherwise from trespassing, selling, alienating or otherwise dealing with the suit land.

(d) The Defendants to pay the Plaintiff the costs of the suit.

Dated and delivered in Malindi this 21st day of **November**, 2014.

O. A. Angote

Judge