



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

CIVIL CASE NO. 156 OF 2012

REUBEN BAYA KENGA.....PLAINTIFF

=VERSUS=

MUNGA FIKIRI CHANGAWA KOMBE..... 1ST DEFENDANT

EMMANUEL KAJIWE CHANGAWA KOMBE.... 2ND DEFENDANT

DAVID CHANGAWA KOMBE.....3RD DEFENDANT

CHANGAWAS KOMBE NZAI.....4TH DEFENDANT

JUDGMENT

1. The Plaintiff moved the court by way of a Plaint dated 21st September, 2012 seeking for the following orders:
 - a. *An order of eviction from the Plaintiff's parcel of land known as Gede/Dabaso/608 situated within Malindi county and subsequent removal of any erections/structures standing thereon.*
 - b. *A permanent injunction restraining the Defendant from interfering in any way with the Plaintiff's use and enjoyment of plot number Gede/Dabaso/608.*
 - c. *Damages for trespass*
 - d. *Costs and interest of the suit.*
2. The Plaintiff has averred in his Plaint that he is the registered owner of land known as Gede/Dabaso/608 measuring 2.43 Ha (the suit property).
3. On the said land, the Plaintiff has made developments and planted mango and coconut tress
4. The Plaintiff has further averred that the Defendants have, without any justifiable cause, encroached on the suit property, cut down trees and continue trespassing on the suit property oblivious of the Plaintiffs' proprietary interests in the suit property.
5. The Defendants were served with the Summons to Enter Appearance and the Plaint on 28th September 2012 but have never entered appearance or filed their defences. The matter proceeded for hearing on 6th June 2013 in the absence of the Defendants.
6. The Plaintiff, PW1 informed the court that the Defendants who are known to him, are his neighbours. The Defendants father, Changawa Kombe Nzai is the one who sold to the Plaintiff the suit property and the Plaintiff obtained a title deed for the suit property in 1999.
7. PW1 produced the title issued on 26th November 1999 as exhibit number 1. The Plaintiff also

- produced the Agreement of Sale showing that he purchased the suit property for Kshs.100,000 as exhibit number 2.
8. PW1 testified that the Defendants invaded his land and cut his mango trees, coconut trees and started cultivating the land claiming that it belonged to them. The Plaintiff (PW1) wants this court to stop the Defendants from continuing with their acts of trespass.
 9. On cross examination by the court, the Plaintiff stated that he bought the suit property in 1978 and that he has been staying on the land with his family since then.
 10. Safari Kazungu Ngoi, PW2, stated that the Plaintiff was his neighbour. PW2 testified that the suit property belonged to the Plaintiff and that the Defendants invaded the Plaintiff's land and cut down mango trees.
 11. According to PW2, the Defendants are now cultivating the suit property notwithstanding the fact that the property belongs to the Plaintiff.
 12. George Katana, PW3, informed the court that he has been working for the Plaintiff since 2007.
 13. It was PW3's evidence that he was working on the suit property when one of the sons of the person who sold the suit property to the Plaintiff, the 1st Defendant went to the suit property and started cutting down coconut trees. A month later, the said son cut down the mango trees and he is currently cultivating the land.
 14. According to the witness, the 1st Defendant is cultivating the suit property despite the fact that he has his own land.
 15. The Plaintiff's counsel made short oral submissions on the same day and reinstated the testimony by the witnesses. I considered the said submissions.
 16. It is not in dispute that the Plaintiff is the registered owner of Gede/Dabaso/608 which he bought from the Defendants' father.
 17. The Plaintiff produced in evidence the original title deed and the Sale Agreement between himself and the Defendants' father, Changawa Kombe Nzai.
 18. The Plaintiff's witness informed the court that the Defendants invaded the Plaintiff's parcel of land, cut down coconut and mango trees and started cultivating the land while aware that the land belonged to the Plaintiff. That is an act of hooliganism which this court cannot condone. The Plaintiff's proprietary interests in the suit property should be protected as provided for under Article 40(1) of the Constitution.
 19. The court was informed that the act of trespass by the Defendants is going on. In the circumstances, the Defendants should pay general damages for the said trespass which I assess at Kshs.100,000.
 20. For the above reasons, I allow the Plaintiff's Plaint in the following terms:

(a) The Defendants, their agents, servants or any person acting under them be, and are hereby evicted from the Plaintiff's land known as Gede/Dabaso/608.

(b) A permanent injunction be and is hereby issued restraining the Defendants, their agents or any person acting under them from interfering in any way with the Plaintiff's use and enjoyment of land known as Gede/Dabaso/608.

(c) The Defendants jointly and severally to pay the Plaintiff Kshs.100,000/- being damages for trespass.

(d) The Defendants to pay the costs of the suit and interest on (c) above at court rates.

Dated and Delivered in Malindi this 25^h day of **July**, 2013

O. A. Angote

Judge