



Katana & another (Suing as the Administrator of the Estate of Mwandenge Nguwa Mwandenge - Deceased) v Mupe & 9 others (Environment & Land Case 194 of 2017) [2025] KEELC 3228 (KLR) (7 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3228 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 194 OF 2017**

FM NJOROGE, J

APRIL 7, 2025

BETWEEN

KADII KAHINDI KATANA 1ST PLAINTIFF

FELIX MWANDENGE 2ND PLAINTIFF

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF MWANDENGE
NGUWA MWANDENGE - DECEASED**

AND

NZOVU MUPE & 9 OTHERS & 9 OTHERS & 9 OTHERS DEFENDANT

JUDGMENT

Plaint.

1. The plaintiffs commenced this suit by way of a plaint signed by the second plaintiff and dated 11th September 2017. In that plaint they sought following prayers:
 - a. A permanent injunction order against the respondent restraining them whether by themselves their agents and or servants from disposing, selling, buildings structures, hiding cadaver, leasing and or interfering with the applicant's property known as Kilifi/Vyambani/222 in any manner;
 - b. Any other or father relief that this court made in feet and just to Grant.
2. The plaintiffs averred that they are the legal and beneficial owners of Plot Number 222 which is registered in the name of Mwandenge Nguwa Mwandenge. The defendants are trespassing thereon and building some structures and undertaking other activities without consulting the plaintiffs. The plaintiffs' attempts to have the matter settled out of court have failed because the defendants have ignored such attempts, hence the suit.



Defence And Counterclaim

3. All the 10 defendants filed their joint statement of defense and counterclaim dated 9th November 2017 through C.O. Nyamwange and Company Advocates. They deny the plaintiff's claim in their defense. They further aver that they, their parents and grandparents have lived on the suit property for four generations. In their counterclaim they reiterate the matters in their defense, and add that at no time have the plaintiffs ever attempted to evict them, their parents and grandparents. They assert that they are entitled to ownership of the suit land by virtue of the doctrine of adverse possession. They claim against the defendants in the counterclaim for an order compelling issuance of title in respect of the suit property to them as well as costs of the counterclaim and interest there on and any other for further relief as the court may deem just.
4. The plaintiffs filed a reply to defense and defence to counterclaim dated 25th of October 2017.
5. A consent order was recorded in this suit on 6th December 2017 in which it was agreed as follows:
 - a. That the County Surveyor Kilifi do survey the boundary in dispute and avail his/her report to court within 45 days;
 - b. The Surveyor's costs to be met equally by both parties;
 - c. The matter be mentioned on 12th March 2018 for father directions;
 - d. That status quo obtaining as of 1st November 2017 to be maintained until the mention date.
6. I have noted that the District Surveyor filed a report dated 12th February 2018 with a sketch attached.
7. The suit came up for hearing before Honorable Justice Odeny on 2nd February 2022 when two prosecution witnesses testified and the plaintiffs' case was marked as closed.
8. Hearing continued before me on 27/11/2023 when 2 defence witnesses testified. The matter was adjourned several times to enable other defence witnesses to testify but none were called and the defence case was closed on 5th February 2025. Evidence Of The Parties

Evidence for The Plaintiffs

9. PW1 Felix Mwandenge gave or evidence and adopted his witness statement dated 11th September 2017. His evidence is that he is brother to Mwandenge Nguwa Mwandenge. Mupe Bedzame Mulevi came area in the 1960s seeking pastures for his livestock away from his area in Mikuluni and he was allowed access to a defined section of the suit land on condition that he would not develop permanent structures or inter his dead kin thereon, which conditions he obeyed until the demise of PW1'S grandfather and father. The land was adjudicated in the 1990s and it was registered under different parcel numbers 221, 222 and 146.
10. Plot number 222 was registered in the name of his father. Plot Number 146 was registered in the name of Gideon Gona Nguwa. Plot number 221 was registered in the name of the other 5 family members.
11. During registration, the family of Mupe Bedzame Mulevi did not object or lodge any case to claim the land because they knew that they had no right to claim it. After the death of Mupe Bedzame Mulevi his family started trespassing by cultivating and building permanent houses on the land by force. This resulted in at least one of them being arrested and charged in court. They also buried the remains of two of their deceased family members on the land. However, Mupe Bedzame Mulevi who died in 1993 as well as others from that family were not buried on the land but were buried in their own land back where they had come from.



12. PW2 Kadii Kahindi Katana gave oral evidence and adopted her witness statement dated 11th September 2017 as part of her evidence-in-chief. Her evidence is that she is the widow to the late Mwandenge Nguwa Mwandenge who was the registered owner of the suit land. She and her 4 children and her late husband lived on the suit land peacefully without any interference and cultivated it. After the death of Mupe Bedzame Mulevi, his family started trespassing on the suit land by cultivating and building permanent houses. Dzovu Mupe, one of the family's members was on one occasion jailed for 3 months and the trespass thus subsided. Later in 2014 her attempts to plough the land was thwarted by three members of Mupe Bedzame family who claimed that the land is theirs. They were armed with pangas. The incident was reported and they were arrested and charged in court. In 2016 they buried the remains of one Festus, and on 4th March 2017 they buried the remains of Jumwa Chai, on the suit land.

Evidence for The Defendants/Counterclaimants

13. DW1, Chilumo Dzombo Mupe, gave oral evidence and adopted his witness statement filed on 15th November 2022 as his evidence-in-chief and was cross-examined. His evidence is that he is 34 years of age; that he has been raised on the parcel of land known as Kilifi Mavueni 3B/1029; that his father had no dispute with the late Mwandenge and his family who are the owners of plot number Kilifi Mavueni 3B/857; that the parcel of land claimed by the plaintiffs is located in Vyambani and not in Mavueni.
14. Under cross-examination by Mr. Obaga for the plaintiffs, DW1 admitted that they do not have any title deed to the land but only a plot number. He admitted that he and 2 others were arrested in 2014, but stated that they were released on bond and not convicted. He stated that the remains of Mupe Ndzovu were interred on the land.
15. On re-examination DW1 stated that their family had interred the remains of more than 20 deceased persons on the suit land before Mwandenge died.
16. DW2 Chivatsi Chai Mupe testified orally and adopted his witness statement filed on 15th November 2022 as his evidence-in-chief. His evidence is that he is the first born son of Chai Mupe Nzovu; that he is aged 64; that his father is the registered owner of parcel number Kilifi Mavueni 3B/1029; that Chai Mupe Nzovu and Nzovu Mupe are brothers; that Chai Mupe Ndzovu's land neighbors Kilifi Mavueni 3B/857 owned by the plaintiff's father and he has lived on the said land for least seven decades. Chai Mupe Ndzovu is still alive; that the parcel of land which the plaintiffs are claiming is Kilifi Vyambani 222.

Analysis And Determination

17. In this suit, the plaintiffs are intent on securing orders keeping the defendants from trespassing on Kilifi/Vyambani/222. That is a parcel of land measuring 1.66 hectares registered in the name of Mwandenge Nguwa Mwandenge (deceased) on 3rd November 2005. The plaintiffs are the administrators to his estate. The defendants on the other hand maintain in their defence that they have lived on the suit property for 4 generations and are entitled to ownership property by way of adverse possession. They seek in a counterclaim that title to the suit land be issued in their name.
18. In the Defense to Counterclaim the plaintiffs deny that the defendants have lived on the suit land for generations aver that they began trespassing on the suit land in 2016 and that they do not have permanent structures on the suit premises.
19. Evidence for the defendants however suggests that the parcel of land that they reside on is Kilifi/ Mavueni/3B/1029 owned by Chai Mupe Nzovu, father to the 9th defendant. Their evidence therefore seems to contradict their defence which suggests that they live on the plot Kilifi/ Vyambani/ 222.



20. This court, perceiving the possible existence of a boundary dispute, commissioned a surveyor's report dated 12th February 2018. A perusal of that report shows that the defendants have encroached on Plot Number 222 and that the plot they claim to be theirs, Plot Number Kilifi Mavueni 3B/1029 is not reflected in the Registry Index Map sheet that hosts Plot No. Kilifi/ Vyambani/ 222. The two parcels are said to be on different Registry Index Map sheets, and to be located in different registration sections to wit, Mavueni and Vyambani respectively.
21. The defendant produced a copy of a title deed for Parcel No Kilifi/Mavueni/3B/857, registered in the name of one Mwandenge Kalama. They failed to produce any title to plot number Kilifi/Mavueni 3B/1029 which they claim is their land.
22. This court has also noted that the defendants produced records showing that they lodged a claim for a historical land injustice with the National Land Commission on 20th September 2021 in respect of "Plot Number 1129 3B". That record of claim was lodged by Chilumo Dzombo Mupe who is DW1 herein. DW1 claims that the plot was encroached on by someone unknown to him claiming that he is the owner, and that person does not come from within the locality. Since the defendants know the plaintiffs, clearly, that person who grabbed their land can not be any of the plaintiffs, and the defendants' evidence clearly points to a parcel other than Kilifi/ Vyambani/222.
23. From the foregoing, it is clear that the defendants are claiming a parcel of land entirely different from Kilifi/ Vyambani /222. Kilifi/ Vyambani /222 is owned by the plaintiffs. They also appear not to know the exact location of their property. The evidence they have given does not support their defence and their claim for adverse possession. Their defence and counterclaim must therefore fail since they are claiming a different plot all together.
24. It must also be noted herein that the defendants conducted very poor investigation in respect of their defense in this matter, and their evidence has not helped the court in any way.
25. The upshot of the foregoing is that the plaintiffs' claim succeeds while the defendants' counterclaim fails. I therefore dismiss the counterclaim dated 9th November 2017 and I enter judgment for the plaintiffs as prayed in Prayer Nos a) and b) in the plaint dated 11th September 2017. The defendants shall jointly and severally meet the costs of the suit and the counterclaim.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 7TH DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

