



REPUBLIC OF KENYA



KENYA LAW
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**Mwangudza v Kazungu & 2 others (Environment & Land Case
216 of 2014) [2022] KEELC 3111 (KLR) (27 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3111 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 216 OF 2014**

**MAO ODENY, J
JUNE 27, 2022**

BETWEEN

JOHNSON MWANGUDZA PLAINTIFF

AND

EDWARD KAZUNGU 1ST DEFENDANT

HAMISI MURAMBA 2ND DEFENDANT

RONALD SIRYA 3RD DEFENDANT

JUDGMENT

1. By an amended Plaint dated 2nd April 2015, the Plaintiff herein sued the defendants jointly and severally seeking the following orders: -
 - a) A permanent injunction order restraining the Defendants/ Respondents by themselves, their servants, agents, family members and any other person deriving interest and/or acting under them from trespassing and entering onto the Plaintiff's land being portion Nos. 6717, 6718 and 6720 and from constructing a perimeter wall fence and from constructing houses/ structures thereon, alienating, disposing off and or dealing with the plots in any manner whatsoever and vacant possession by eviction and demolition of the unauthorized constructions/ structures houses thereof.
 - b) Costs of the suit.
 - c) Interest.
 - d) Any other further relief the Honourable court may deem fit and just to grant.



Plaintiff's Case

2. PW1 adopted his statement and stated that he is the beneficial owner of all those portions of land known as Nos. 6717, 6718 and 6720 Malindi which he purchased vide a sale agreement dated 29th September, 1988 from Salim Abdulla Bakhshuwein. That at the time of purchase, the portions were numbered 311, 312 and 314 as indicated in the agreement but after completion of the survey they were given new numbers as per the deed plans.
3. It was PW1's testimony that on 27th October, 2014, the Plaintiff noticed that the 1st and 2nd Defendants together with other persons' trespassed and entered into portion No. 6720 without permission and begun clearing the plot and uprooting the cassava and maize crops that he had planted.
4. PW1 further testified that the Defendants had erected permanent structures on Portion No. 6720 without his authorization and/or consent and have adamantly refused to yield to his demands to stop construction and vacate the suit property.
5. He also informed the court that none of the Defendants are proprietors of the suit property and produced a sale Agreement, receipts for payment of land rates, copies of Deed plans for Portion Nos. 6717, 6718 and 6720 and photographs of the illegal permanent structures erected on Portion No. 6720.
6. PW1 further stated that he warned the Defendants but they did not vacate necessitating the filing of a report at Malindi Police Station vide OB No. 55/3/11/2014 and urged the court to grant the orders as prayed.

Defence Case

7. The 2nd Defendant filed a statement of defence dated 26th October, 2021 but neither the Defendants nor their counsel attended court therefore their case was closed for non-attendance.

Analysis and Determination

8. The Defendants' counsel was served with a hearing Notice but neither the Defendants nor counsel were in court to defend the case. It is on record that on the hearing date, the matter was placed aside for hearing at 11 am whereby Plaintiff's counsel informed the court that she had called Mr. Otaru, counsel for the Defendants and sent him a text message but he did not come for the hearing therefore the matter proceeded undefended.
9. The Plaintiff gave evidence of how he acquired the suit land and produced a sale agreement, deed plans and rates payment receipts and photographs of the structures allegedly put up illegally by the Defendants.
10. The Plaintiff's evidence is uncontroverted and therefore no proof that the land was acquired fraudulently or through unprocedural ways. Sections 24, 25 and 26 of the [Land Registration Act](#) No 3 of 2012 provides as follows: -

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.”

11. Section 25 (1) of the said Act further provides that: -

the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as



provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to any lawful encumbrances, set out in this section.”

12. There is no explanation why the Defendants are on the Plaintiff’s suit land and therefore they are trespassers. I find that the Plaintiff has proved his case against the Defendants and therefore enter judgment as prayed in the amended plaint with costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 27TH DAY OF JUNE, 2022.

M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

