



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MALINDI
Civil Appeal 22 of 2008**

KARIHE LEWA

CHAMONGONI.....APPELLANT

VERSUS

GEORGE

BAYA.....RESPONDENT

JUDGMENT

1. This appeal arises from the decision of the Lower Court delivered on 26th June 2008 in SRMCC No.287 of 2004. That case was filed by the present Respondent George Baya(George) seeking orders that the present appellant KARIHE LEWA CHEMANGONI(KARIHE) do vacate and land over vacant possession of the portion of land occupied by him being a part of plot number CHONYI/GALANEMA/474 measuring 3.8ha and registered in the name of the plaintiff. After hearing the evidence adduced by the parties the trial magistrate summoned ELIZABETH NZAI THOYA, the Land Registrar Kilifi.

2. Her evidence in part resolved the dispute, according to the Lower Court, as it was demonstrated that the parcel claimed by George was registered in his name in 1981 George had objected during the adjudication process in CHONYI/GALANEMA adjudication in 1976 to KARIHE being allotted the entire parcel known as CHONYI/GALANEMA/43.

The objection and subsequent appeal to the minister were resolved in George`s favour thus the parcel claimed by George was assigned the number 474 while parcel number 43 which measures over 12 ha remained in the name of KARIHE and one KARIHE LEWA.

3. In his memorandum of appeal KARIHE faults the decision of the lower court for failing to appreciate that GEORGE had encroached into his land through a misapprehension of the land Registrar`s evidence KARIHE also complains that GEORGE`s claim was statute barred and that if the parcel No.474 was his, then the KARIHE had acquired title thereto by adverse possession.

4. The appeal was heard through written submissions which I have read alongside the record of the Lower Court. I must say however, I was confused by the submissions of counsel for the appellant which appeared to target the decision of the appeals committee during adjudication. With respect these matters were never canvassed during, the trial. Ditto, the question of GEORGE`s claim being statute-barred.

5. The submissions appear to suggest that this appeal is an appeal from the decision of Provincial Land appeals Board and other adjudication committees. Thus the submissions were off the mark and failed to address the memorandum of appeal filed on behalf of the appellant.

6. Two facts were not disputed at the trial, namely;-

i. That GEORGE is the registered owner of Plot No.474 since 1981, while KARIHE and another are the registered owners of plot 43.

ii. The two plots are separate parcels.

iii. KARIHE has been in occupation of plot 474 against the wishes of GEORGE.

7. The titles issued upon completion of the adjudication exercise are absolute and indefeasible save where registration is shown to be obtained by fraud or mistake is proven (see section 27, 28 of the Registered Land Act).

8. Having carefully considered the matter, I do not accept that the trial magistrate misapprehended the evidence tendered before him. His decision cannot be faulted as it was based on sound analysis of the evidence. Considering the history of this dispute, I think this appeal is yet another attempt by KARIHE to have another bite of the cherry. The same has no merit and is dismissed. The costs of the appeal are awarded to the Respondent.

Delivered in the absence of parties on 27th July, 2012. Notice of same be sent to respective advocate,
Court clerk – Evans

C. W. Meoli
JUDGE