



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Charo v Koi & another (Environment & Land Case 14 of 2015)
[2022] KEELC 2738 (KLR) (13 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 2738 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 14 OF 2015**

**MAO ODENY, J
JULY 13, 2022**

BETWEEN

ANTHONY MWENI CHARO PLAINTIFF

AND

KATANA KOI 1ST DEFENDANT

AMANI KAHINDI 2ND DEFENDANT

JUDGMENT

1. By a plaint dated 30th January 2015 the Plaintiff herein sued the Defendants jointly and severally seeking the following orders: -
 - a) A declaration that the plaintiff is entitled to vacant possession of parcels of land each measuring 0.5 acres within the larger plot L.R No. 39 situated at Ganda, Kilolongo area, Malindi.
 - b) A permanent injunction restraining the defendants by themselves, or through their employees, agents or otherwise from selling, alienating or otherwise dealing with the suits of lands
 - c) Costs of this suit
 - d) Any other relief that this Honourable court may deem fit
2. The Defendants were served with summons but neither entered appearance nor filed a defence hence the matter proceeded for formal proof.

Plaintiff's Case

3. PW1 gave evidence and stated that he bought the suit land measuring one acre from Ali Abubakar on 15th May 2013 and 15th November 2013 respectively vide two sale agreements which transactions were witnessed by the area Assistant Chief.



4. He testified that sometime in October, 2014 the Defendants entered into his portion of land without any authority and consent and started cutting down trees and when he inquired the Defendants threatened him necessitating him to report the matter to the Area Assistant Chief who was unable to resolve the matter thus the institution of the instant suit.

Plaintiff's Submissions

5. Counsel reiterated the Plaintiff's evidence and stated that the Plaintiff has proved that the Defendants are trespassers hence he is entitled to the orders sought. Counsel relied on the principles for grant of injunction and stated that the Defendant's illegal entry on the Plaintiff's land has infringed on his rights and interests on the suit land.

Analysis and Determination

6. The Defendants were served with summons to enter appearance and a copy of the plaint but they neither entered appearance nor filed a defence within the stipulated period hence the matter proceeded undefended.
7. The issues for determination are the Plaintiff is the rightful owner of the suit land, whether the Plaintiff is entitled to vacant possession and orders of injunction.
8. From the evidence on record together with the agreements for sale, certificate of title which show that the Plaintiff purchased the suit land and paid the purchase price in full, the Plaintiff has proved that he has a right to the property. This evidence has not been disputed by the Defendants who never participated in this suit.
9. I have looked at the two sale agreements produced as the Plaintiff as evidence of purchase of the suit properties. The same is uncontroverted and uncontested. I have also gone through the testimony of the Plaintiff and I am of the view that the Plaintiff is indeed entitled to vacant possession of the suit properties.
10. The Plaintiff stated that the Defendants trespassed on the land sometime in 2014 and destroyed trees without the Plaintiff's consent or authority.
11. Regarding the issue as to whether the Plaintiff is entitled to the reliefs sought, the Plaintiff seeks two remedies; a permanent injunction against the Defendants and vacant possession. The Plaintiff having established that he is the rightful owner of the suit land, is entitled to an order of vacant possession and an injunction against the Defendants. I therefore find that the Plaintiff has proved his case on a balance of probabilities.
12. I therefore make the following final orders: -
 - a) A declaration is hereby issued that the Plaintiff is entitled to vacant possession of parcels of land each measuring 0.5 acres within the larger Plot L.R No. 39 situated at Ganda, Kilolongo area, Malindi.
 - b) That the Defendants to give vacant possession of the suit parcels of land within 30 days failure to which eviction to issue.
 - c) A permanent injunction is hereby issued restraining the Defendants by themselves, or through their employees, agents or otherwise from selling, alienating or otherwise dealing with the suits of lands
 - d) Costs of this suit.



DATED, SIGNED AND DELIVERED AT MALINDI THIS 13TH DAY OF JULY, 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.

