



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MALINDI**

**ELC CASE NO. 36 OF 2016**

**GODFREY MZUNGU CHILANGO.....PLAINTIFF**

**VERSUS**

**1. BAHATI KAZUNGU MULUNGU**

**2. NGUMBAO KAZUNGU MULUNGU**

**3. VIDZO KALAMA MWATSUMA**

**4. ALI NYAMBU.....DEFENDANTS**

**JUDGMENT**

**BACKGROUND**

1. By a Plaint dated and filed herein on 26<sup>th</sup> February 2016, Godfrey Mzungu Chilango (the Plaintiff) prays for Judgment against the four-named Defendants jointly and severally for:

***a) A permanent injunction restraining the Defendants, their servants, agents, employees, hirelings or whomsoever (is) taking instructions from them, from interfering with the Plaintiff's peaceful enjoyment and use of the suit property;***

***b) A mandatory injunction compelling the Defendants to demolish and remove their illegal structures constructed on the property and give vacant possession to the Plaintiff;***

***c) Costs of the suit with interest.***

2. Those prayers arise from the Plaintiff's contention that at all times material to this suit he was the registered owner of all that parcel of land known as Kilifi/Roka/898 measuring about 12 acres and situated within Kilifi County. The Plaintiff accuses the Defendants of trespassing onto the said property, occupying the same and destroying the trees thereon without his consent and or authority.

3. But in their Statement of Defence dated 8<sup>th</sup> November 2016, Bahati Kazungu Mulungu and Ngumbao Kazungu Mulungu (the 1<sup>st</sup> and 2<sup>nd</sup> Defendants) deny that the Plaintiff is the registered owner of the suit property and aver that the same is their ancestral land in which they have lived from time immemorial. It is further their case that the suit property remains in the name of their deceased father awaiting the succession process to be completed and otherwise invite the Plaintiff to strict proof.

4. Vidzo Kalama Mwatsuma and Ali Nyambu sued herein as the 3<sup>rd</sup> and 4<sup>th</sup> Defendants neither entered appearance nor filed a Statement of Defence.

5. On the date fixed for the hearing of the suit however, neither the 1<sup>st</sup> nor the 2<sup>nd</sup> Defendants attended Court and the trial proceeded solely with the testimony of the Plaintiff.

**The Plaintiff's Case**

6. Testifying as PW1 in these proceedings, the Plaintiff, a resident and farmer in Chumani Village told the Court that the suit property measures 12.4 acres and that he bought the same from one Ali Athuman Ali on 1<sup>st</sup> March 2011 at a consideration of Kshs 1,440,000/-. He

further testified that they executed a Sale Agreement with the Vendor which he produced herein as Pexh 3 and paid the entire purchase price.

7. The Plaintiff told the Court that the suit property was thereafter transferred to his name and that he was issued with a title deed therefor on 10<sup>th</sup> April 2015 (Pexh 1). When he tried to get into the land however, some people invaded the same and destroyed everything thereon. The four defendants were among those who invaded the land and took it over. The Plaintiff told the Court that they have since built homes thereon and do cultivate the same.

8. The Plaintiff further testified that the suit property initially belonged to Sophia Binti Mohamed who was issued with a title on 29<sup>th</sup> August 2006. (Pexh 4) and that it is Sophia's son who sold the land to him upon Sophia's death. He told the Court that he has since tried to enter the land but the Defendants have been threatening him with dire consequences. He therefore urged the Court to evict the Defendants from the suit property and to restrain them from any further interference therewith.

#### **Analysis and Determination.**

9. I have perused and considered the pleadings filed herein, the Plaintiff's sole testimony at the trial herein and the evidence placed before me. I have equally perused and considered the Plaintiff's submissions herein.

10. It is the Plaintiff's case that he is the registered proprietor of the parcel of land known as Kilifi/Roka/898 measuring approximately 12.40 acres. The Plaintiff testified that he bought the suit property from one Ali Athuman Ali on 1<sup>st</sup> March 2011 at a consideration of Kshs 1,440,000/- and that they executed a Sale Agreement to that effect. He accused the Defendants of trespassing onto the property and proceeding to illegally construct houses thereon and to cultivate the same.

11. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants neither entered appearance nor did they participate in the proceedings herein. On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants entered appearance and filed a Statement of Defence in which they disputed the Plaintiff's ownership of the suit property. They did not however turn up at the trial and thus offered no evidence to controvert that of the Plaintiff.

12. From a Replying Affidavit sworn by the 2<sup>nd</sup> Defendant- Ngumbao Kazungu Mulungu and filed herein on 18<sup>th</sup> November 2016, it was clear that their claim on the land arises from a title deed issued in the name of one Kenga Ngumbao Tsofwa whom they claim to be their step-father. It is further their case that the said Kenga Ngumbao Tsofwa who is said to have passed away on 20<sup>th</sup> January 2007 was registered as the proprietor in trust for their other family members.

13. As it were, the Defendants did not bring any evidence of their relationship with the deceased and how the deceased had acquired the title which they claim to have been in trust for other family members.

14. On the other hand, it was evident from the Plaintiff's testimony and the evidence placed before me that the suit property was initially allotted by the Government through the Settlement Fund Trustees to Sofia Mohamed Ali alias Sofia Binti Mohamed. It was further clear that the said Sofia passed away in 2004 and that in the year 2010, his Son Ali Athman Ali took out Letters of Administration ***in Mombasa High Court Succession Cause No. 324 of 2010*** in order to administer the estate. A Certificate of Confirmation of Grant which lists the suit property was issued to the said Administrator on 21<sup>st</sup> March 2011.

15. It was the evidence of the Plaintiff which was not controverted by the Defendants that it is the Administrator of the Estate of the said Sofia who subsequently sold the land to himself.

16. Arising from the foregoing, I am persuaded that the Plaintiff has proved his case on a balance of probabilities. Accordingly, Judgment is hereby entered for the Plaintiff as prayed in the Plaintiff's pleadings with costs.

17. The Defendants have 45 days from today to vacate the suit property failure to which the Plaintiff may proceed to evict them forthwith with the costs thereof to be borne by the Defendants.

18. Orders accordingly.

**Dated, signed and delivered at Malindi this 22<sup>nd</sup> day of January, 2021.**

**J.O. OLOLA**

**JUDGE**