



**Githinji v Mwadori (Environment & Land Case E051 of 2022)
[2023] KEELC 18547 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18547 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E051 OF 2022**

EK MAKORI, J

JULY 6, 2023

BETWEEN

DAISY WAIRIMU GITHINJI PLAINTIFF

AND

SAFARI WANJE MWADORI DEFENDANT

JUDGMENT

1. This matter proceeded by way of formal proof.
2. The Plaintiff sued the Defendant seeking the following relief (s):
 - i. Mandatory orders directing the Defendant, his agents, employees, assignees, and /or any other person authorized by him to quit, vacate, and/or handover vacant possession of property known as Plot No Kilifi/Kibarani/987;
 - ii. Eviction orders to issue against the Defendants from the property parcel No Kilifi/Kibarani/987 and demolition of any structures put by the Plaintiff;
 - iii. The OCS Kilifi to provide security for that purpose;
 - iv. A declaration be made that the Defendant has trespassed and is in continued trespass onto the Plaintiff's property;
 - v. Compensation for breach of the Plaintiff's right to property under Article 40 of the Constitution;
 - vi. Costs.
3. The record shows that the Plaintiff was served but did not enter an appearance or mount any defence.



4. The matter proceeded to a hearing on March 8, 2023. The Plaintiff adopted her witness statement dated August 30, 2022 and the annexed documents were produced as exhibits in the manner listed.
5. In her testimony, the Plaintiff said she was sold and purchased land parcel No. Kilifi/Kibarani/987 measuring approximately 2.7 hectares (off the Malindi Mombasa Highway) on September 3, 2013 from Lapony Company Limited then the registered owner of the property. The transfer was effected on December 5, 2013 and the title deed was duly issued. To date, the property is free from any encumbrances, cautions, caveats, and any other adverse claims.
6. Sometimes in February 2014, upon visiting the said parcel, she discovered that the Defendant had encroached on the suit property and put up a mud house on some part of the land. The Defendant upon being requested to vacate has refused to do so. The Defendant was invited to a boundary dispute resolution mechanism, and informed by the Land Registrar Kilifi that the land is not his. He has remained adamant and refused to vacate.
7. The Plaintiff has been living on this land for a period of over seven years and has no signs of vacating hence the current suit.
8. Plaintiff contended that she has heavily invested in the land and requires it for commercial purposes hence the orders sought are necessary.
9. The Defendant has denied her investment opportunities and wasted her land and she now seeks to enter the property hence the prayers sought in the plaint.
10. She stated that she is ready to forego compensation but gets the other prayers sought.
11. The claim stands unopposed. The Plaintiff has proved she got the land in question by way of purchase. There is nothing on record to the contrary.
12. I will enter judgment for the plaintiff and issue the following orders:
 - i. Mandatory orders directed at the Defendant, his agents, employees, relatives, assignees, and/or any other person authorized by him to quit/ vacate and/or hand over vacant possession of property No Kilifi/Kibarani/787.
 - ii. Failure to voluntarily vacate as provided in (i) above, the Defendant within 90 days hereof, and in the spirit of Section 152E of the Land Laws (Amendment) Act, 2016, The Defendant to be forcibly evicted from Land Parcel No Kilifi/Kibarani/987 and all structures erected on the suit property be demolished.
 - iii. The OCS Kilifi Police Station to provide security during eviction to maintain Law and order.
 - iv. A declaration does and is hereby issued that the Defendant is a trespasser and continues to trespass on the suit property.
 - v. That pursuant to Article 40 of the Constitution the Plaintiff is entitled to compensation for violation of right to property but that the same is abandoned by the Plaintiff in her testimony.
 - vi. That the Plaintiff will also be entitled to the costs of the suit.
 - vii. The Defendant is to be served forthwith with the orders herein for compliance.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 6TH DAY OF JULY 2023

E.K. MAKORI



JUDGE

In the presence of:

Mr Yassin holding brief for Mr Olonde for the Plaintiff.

Court Clerk: Happy

