



REPUBLIC OF KENYA



**Tuva & another v Wekere & 2 others (Land Case 185 of 2018)
[2022] KEELC 14599 (KLR) (3 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14599 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
LAND CASE 185 OF 2018
MAO ODENY, J
NOVEMBER 3, 2022**

BETWEEN

KANZE KONDE TUVA 1ST PLAINTIFF

BAMBANYA KOMBE RANDU 2ND PLAINTIFF

AND

WEKERE DOMINIC 1ST DEFENDANT

NJENGA DOMINIC WEKERE 2ND DEFENDANT

ANTHONY DOMINIC 3RD DEFENDANT

JUDGMENT

1. By a Plaint dated September 21, 2018 the plaintiffs herein sued the Defendants seeking the following orders: -
 - a) Vacant possession
 - b) Orders of permanent injunction
 - c) Costs of the suit and interests
 - d) Any other relief that this honourable court shall deem just to grant
2. The Defendants were served with summons to enter appearance but neither filed a Memorandum of Appearance nor a defence therefore the matter proceeded undefended.
3. The Plaintiff gave evidence and called 4 witnesses.
4. PW1- Kanze Konde Tuva who adopted her witness statement dated September 21, 2018 and produced documents as per the list of documents as PEx 1 to 6. It was her evidence that their late father Konde Randu Konde was residing at Mgurureni village in Malindi where he occupied an unregistered parcel



of land measuring six acres known as Plot No. 51 Mgurureni/Ganda. That their father settled on the land many years ago without interference from anybody and even their family members died and were buried on the suit land.

5. PW1 further stated that in the year 2012, the 1st and 3rd Defendants came to the suit land and started cutting down the Plaintiffs' father's cash crops and started planting watermelons. The Plaintiffs reported the matter to the village elder but Defendants did not honour the summons and have prevented the Plaintiffs from utilizing the suit land.
6. PW2- Babanya Kombe Randu also adopted his witness statement dated September 21, 2018 and stated that he went to work in Lamu and when he came back he found the Defendants had taken over the suit land. He also stated that he does not live on the land as the Defendants have denied them an opportunity to utilize the same.
7. PW3, PW4 and PW4 also adopted their witness statements and corroborated PW1 and PW2's evidence.

Analysis And Determination

8. The issue for determination is whether the Plaintiffs have proved their case on a balance of probabilities that they are the owners of the suit land and whether they deserve the prayers sought.
9. This is an undefended claim but the Plaintiff is still under a duty to prove her case on a balance of probability. The legal burden of proof is provided in Section 107 of the *Evidence Act*, Cap. 80 of the Laws of Kenya which states -
 - (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."
10. The Plaintiffs gave evidence and stated that their family has been in occupation of the suit land since time immemorial and further, that some of their relatives died and were buried on the suit land. They produced a letter from the chief stating that their late father Konde Randu Kombe died and was buried on the suit land in the year 1995.
11. The Plaintiffs also called witnesses who confirmed that the Plaintiffs are their neighbours whose father planted mango trees, and cashew nuts and that nobody has ever claimed the suit land until 2012 when the Defendants trespassed onto the land and cut down the trees.
12. The Defendants were given an opportunity to defend themselves but failed to do so within the stipulated period. They were also summoned by the Assistant Chief Ganda Location but did not attend.
13. The Plaintiffs also have locus standi to file this suit as they sought and obtained a Limited Grant of Letters of Administration dated 15th June 2015 to file this suit on behalf of the estate of their late father Konde Randu Kombe. Further that vide a letter dated March 2, 2015 the Chief Ganda Location confirmed that the deceased Konde Randu Kombe who died on March 15, 1995 was buried at Mguruleni Fundi Hamisi Village Ganda Sub location.
14. The Plaintiffs' evidence is uncontroverted and therefore find that the Plaintiffs have proved their case on a balance of probabilities.



15. The Defendants to give vacant possession of the suit land within 45 days failure to which eviction order to issue. The Defendants to pay costs of the suit.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 3RD DAY OF NOVEMBER, 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.

