



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 166 OF 2015**

**BENARD KAZUNGU KAVURYE.....PLAINTIFF**

**VERSUS**

**1. KATANA MRAMBA MWAKUDZA**

**2. CHIWAI MRAMBA MWAKUDZA-.....DEFENDANTS**

**JUDGMENT**

1. By his Plaint dated and filed herein on 21<sup>st</sup> September 2015, Kazungu Kavurye Chiwani prays for Judgment against the two Defendants for:-

***a. An order of permanent injunction restraining them from entering, trespassing into, disposing of, alienating, constructing on or in any other manner dealing with all that piece of land known as Kilifi/Vyambani/329 measuring approximately 3.57 Ha and situated at Vyambani Village in Kilifi County (the suit property).***

***b. Costs of the suit and interest thereon.***

2. Those prayers arise from the Plaintiff's contention that at all times material, he was the rightful owner of the suit property having purchased the same and taken possession thereof. It is the Plaintiff's case that without his knowledge or authority, the Defendants have trespassed onto the suit property, cleared the bushes and commenced construction of some temporary structures thereon.

3. The two Defendants-Katana Mramba Mwakudza and Chiwai Mramba Mwakudza did not file any Statement of Defence to the Plaintiff's claim and this matter accordingly proceeded by way of formal proof.

4. At the trial, the Plaintiff called a total of three (3) witnesses in support of his case.

5. PW1-Kazungu Kavurye Chiwai is the Plaintiff. He told the Court that he is the registered owner of the suit property. Sometime in January 2014, he went to the suit property and found the Defendants thereon. The Defendants told him that they had been chased from another piece of land. Eventually they refused to vacate the suit property.

6. PW1 told the Court that after he filed this case, an order was issued for the Defendants to vacate on 4<sup>th</sup> April 2016. The Defendants however remain on the land to-date.

7. PW2-Omar Ali Beweru is a neighbour of the Plaintiff. He testified that he did not know the Defendants. He told the Court that the Plaintiff purchased the land and has always been in actual possession thereof over the years.

8. PW3-Juma Mohamed Sori is also a neighbour of the Plaintiff's. He told the Court that he first saw the Defendants on the suit property in 2014. At that time, the Defendants used to move from one parcel of land to the other. They settled on the suit property where they remain to-date.

9. I have perused and considered the pleadings filed herein, the testimony of the Plaintiff's witnesses and the evidence adduced at the trial.

10. It is the Plaintiff's case that he is the registered proprietor of the suit property-Kilifi/Vyambani/379. In support of this position, the Plaintiff produced a Copy of a title deed issued in his name on 3<sup>rd</sup> February 2015, some seven (7) months before he filed this suit. In addition, he produced a Certificate of Official Search dated 25<sup>th</sup> August 2015 also confirming that the property is registered in his name.

11. Besides himself, the Plaintiff called two(2) other witnesses both of whom confirmed not only that the suit property belonged to the Plaintiff but also that the Defendants had only recently in or about the year 2014 encroached upon the land.

12. It was the Plaintiff's case that when he visited the property in January 2014, he found the Defendants had moved therein, cleared bushes and began construction of temporary structures thereon. Despite various efforts to have the Defendants vacate the land, they had refused and neglected to do so thereby leaving the Plaintiff with no choice but to institute this suit.

13. As it turned out, despite entering appearance herein, the Defendants neither filed a Statement of Defence nor did they testify or adduce any evidence at the trial herein. In the circumstances the Plaintiff's claim remains uncontroverted and I had no reason to doubt his testimony and that of his two witnesses that the Defendants had recently encroached on the suit property which is clearly registered in his name.

14. In the premises, I am satisfied that the Plaintiff has proved his case to the required standard. Judgment is accordingly entered for the Plaintiff as prayed in the Plaint.

15. The Plaintiff shall also have the costs of this suit.

**Dated, signed and delivered at Malindi this 6<sup>th</sup> day of May, 2020.**

**J.O. OLOLA**

**JUDGE**