



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 193 OF 2018

ANDERSON BECHIKO MWAGAMBO

(Suing as Legal Representative and/or Administrator of the Estate of

MWAGAMBO GAMBO TEMBO(DECEASED).....PLAINTIFF

VERSUS

MWANGOME MUDIWA BINGO alias MWAGAMBO MUDIWA BINGO

NYAMAWI GAMBO MWAGAMBO.....DEFENDANTS

JUDGMENT

1. By the Complaint dated 16th October 2018 as amended on 2nd December 2019, Anderson Bechiko Mwangambo, suing in his capacity as the Legal Representative of the Estate of Mwangambo Gambo Tembo (the Plaintiff) prays for Judgment against the two Defendants jointly and severally for: -

- a) An order compelling the Defendants and their authorized agents and/or servants to hand over vacant possession of Plot No. Kilifi/Pingilikani/216 to the Plaintiff;***
- b) Alternatively, to prayer (a) hereinabove, the Court Bailiff to evict the Defendants and/or their authorized agents and/or servants from Plot No. Kilifi/Pingilikani/216 and give the Plaintiff vacant possession thereof at the Defendants' cost.***
- c) The OCS Kijipwa Police Station or any other Police Station with jurisdiction to provide security during the eviction of the Defendants and or their authorized agents and or servants from Plot No. Kilifi/Pingilikani/216;***
- d) A permanent injunction restraining the Defendants and or their authorized agents or servants from trespassing into Plot No. Kilifi/Pingilikani/216 and or dealing with the said Plot in any manner whatsoever.***
- e) Costs of the suit and interest; and***
- f) Any other order and relief that the Court may deem fit to grant.***

2. Those prayers arise from the Plaintiff's contention that at all times material, the late Mwangambo Gambo Tembo was the registered proprietor of the suit property having been so registered on 8th August 2013 following a land adjudication process carried out in the Pingilikani area. The Plaintiff asserts that despite the said adjudication, the Defendants have continuously prevented the Plaintiff and other beneficiaries of the estate of the deceased from enjoying quiet possession of the land.

3. Despite Service of Summons, Mwangombe Mudiwa Bingo alias Mwangambo Mudiwa Bingo (the 1st Defendant) and Nyamawi Gambo Mwangambo (the 2nd Defendant) failed to enter appearance and or to file a Statement of Defence. Accordingly, this matter proceeded by way of formal proof.

4. At the trial herein, Anderson Bechiko Mwangambo (PW1) testified as the sole witness in his case. Relying on his Statement as recorded and filed herein on 3rd December 2019, PW1 testified that Mwangambo Gambo Tembo who originally filed the suit herein was his father. PW1 told the Court his father passed away on 30th January 2019 before the suit was heard and determined.

5. Accordingly, PW1 told the Court he had petitioned for a limited grant of letters of administration for the estate of Mwagambo Gambo Tembo vide ***Kilifi SPMCC No. 118 of 2019***. He was issued with the limited grant on 9th October 2019.

6. PW1 testified that the deceased is the registered proprietor of all that parcel of land known as Plot No. Kilifi/Pingilikani/216 having been registered as such on 8th August 2013. PW1 told the Court that prior to the registration, the Pingilikani area had been declared an adjudication section after which the suit property was recorded in favour of the 1st Defendant.

7. PW1 told the Court that his father then appealed to the Land Adjudication Committee which on 28th March 2006 found in his favour and awarded the suitland to the deceased. PW1 told the Court the 1st Defendant did not appeal the decision. Upon completion of the register however, the 2nd Defendant lodged an objection against the deceased. That objection was however dismissed on 26th November 2010 and the 2nd Defendant did not appeal the same.

8. PW1 testified that despite the decision made on 26th November 2010, the Defendants have continued to prevent the Plaintiff and his family from utilizing the suit property. As a result of the Defendants unlawful activities, the estate of the deceased has continued to suffer loss and damage having been denied their right to occupy and use the land.

9. I have perused and considered the pleadings as filed by the Plaintiff, the testimony of the sole witness and the evidence adduced at the trial. I have similarly perused and considered the submissions of Mr. Lewa, Learned Counsel appearing for the Plaintiff.

10. From the material placed before me, it was evident that Plot No. Kilifi/Pingilikani/216 is registered in the name of the deceased – Mwagambo Gambo Tembo. The registration of the parcel of land measuring 2.07 Ha was done on 8th August 2013 following an adjudication process carried out in the Pingilikani area prior to the issuance of the titles.

11. The Plaintiff has produced in evidence the proceedings and findings of ***Land Adjudication Case No. 348 of 2005***. A perusal thereof reveals that initially at the commencement of the adjudication process, the suit property was registered in favour of the 1st Defendant. Being dissatisfied with the decision, the deceased instituted the proceedings before the Pingilikani Land Adjudication Committee which Committee upon hearing the evidence of the deceased awarded the parcel of land to himself on 28th March 2006.

12. The Plaintiff has similarly produced certified proceedings of ***Objection Case No. 203 of 2010***. It is apparent from a perusal thereof that upon completion of the adjudication register in the said Pingilikani area, the 2nd Defendant was not happy with the registration of the deceased as the proprietor of the suit property. The 2nd Defendant therefore lodged an objection contending that the suit property was their ancestral land.

13. The 2nd Defendant's objection was however dismissed on 26th November 2010 with a rider that he was free to appeal the decision within 60 days. There is however no evidence that the 2nd Defendant preferred any appeal and hence the registration of the deceased as the proprietor of the suitland.

14. It is also apparent that despite the said decision, the Defendants have declined to yield vacant possession of the suit property. Prior to his death on 30th November 2019, the late Mwagambo Gambo Tembo had lodged these proceedings asking the Court to grant them vacant possession. Upon his death, his son Anderson Bechiko Mwagambo was issued with Letters of Administration Ad Litem on 9th October 2019 vide ***Kilifi SPM Succession Cause No. 118 of 2019***. He has urged the Court to grant the same orders sought by his late father as the Defendants are yet to yield vacant possession.

15. From the material placed before me, I had no doubt that the deceased lawfully acquired the suit property following the process of land adjudication undertaken in the Pingilikani Area. The Plaintiffs have testified and produced clear evidence as to how they acquired the suit property. Their averments have not been traversed by the Defendants who failed to enter appearance and or to participate in these proceedings.

16. In the premises, I am satisfied that the Plaintiff has proved his case against the Defendants on a balance of probabilities. Consequently, he is entitled to the reliefs sought and I allow the suit as prayed.

17. The Defendants have 45 days from today to hand over vacant possession of the suit property failure to which they shall be evicted therefrom by the Court Bailiff as sought under Prayer (b) of the Plaintiff.

18. The Plaintiff shall have the costs of this suit.

Dated, signed and delivered at Malindi this 16th day of July, 2021.

J.O. OLOLA

JUDGE