



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 61 OF 2019**

**FATMA SAID ABOUT** Suing as Guardian Ad Litem of the Estate of

**SAID ALI KHAMIS (Deceased).....PLAINTIFF**

**VERSUS**

**ABDULMALIK ABDALLA SAID.....DEFENDANT**

**JUDGMENT**

1. By her Complaint dated 26<sup>th</sup> July 2019 Fatuma Said About suing as the Administrator of the Estate of Said Ali Khamis (the Plaintiff) prays for Judgment against Abdulmalik Abdalla Said (the Defendant) for: -

*a) Eviction of the Defendant from the suit property;*

*b) A permanent injunction against the Defendant and his family restraining them from interfering with the Plaintiff's parcel of land; and*

*c) Costs of the suit and interest thereon at Court rates.*

2. The prayers arise from the Plaintiff's contention that at all times material, the Plaintiff was the registered proprietor of the suit property described as all that parcel of land known as Portion No. 1071 and 1072 Malindi measuring approximately 0.0221 acres (0.009 Ha) and 0.0156 acres (0.006 Ha) respectively.

3. The Plaintiff asserts that the Defendant who is her neighbor has without any colour of right wrongfully and unjustifiably invaded the Plaintiffs' parcel of land and has continued to occupy and reside thereon without the Plaintiff's permission. Despite demand made for the Defendant to vacate the land, he has refused and/or neglected to do so thereby necessitating this suit.

4. The Defendant neither entered appearance nor filed any response to the Plaintiff's claim and hence this matter proceeded by way of formal proof.

5. Testifying as the sole witness in her case, the Plaintiff (PW1) told the Court she brought this suit on behalf of the estate of her father the late Said Ali Khamis who is the registered owner of the suit properties. PW1 further told the Court that the Defendant had trespassed onto the father's land and urged the Court to evict him from the premises.

6. I have perused and considered the pleadings filed, the sole testimony of the Plaintiff and the evidence adduced at the trial. I have similarly considered the submissions filed herein by Mr. Gicharu, Learned Counsel for the Plaintiff.

7. The Plaintiff has brought up this suit as the Administratrix of the estate of her father the late Said Ali Khamis. From a perusal of the Limited Grant of Letters of Administration Ad- Litem issued to the Plaintiff in *Malindi CM's Succession Cause No. 16 of 2019*, her father passed away on 19<sup>th</sup> October 1994 at Shella within Malindi.

8. It was apparent from the extract of the two Certificate of Ownership documents produced by the Plaintiff that her father was the proprietor of the suit properties, being Land Portion No. 107 and 1072 Malindi. The Plaintiff accuses the Defendant whom she refers to as their neighbor of invading the suit properties and proceeding to occupy the same without her permission and or justification.

9. From the material placed before me, the Defendant was served with the Summons to Enter Appearance as well as the pleadings herein at

his residence in Shella Area on 26<sup>th</sup> October 2019. The Defendant has however neither entered appearance nor responded to the Plaintiff's claim.

10. As it were, Section 26 of the Land Registration Act, 2012 provides as follows: -

***“26 (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-***

***a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or***

***b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.***

***(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the seal of the Registrar, shall be received in evidence in the same manner as the original.***

11. At the formal proof hearing, the Plaintiff produced the documents to support her claim that the suit properties are registered in the name of her father who is now deceased. The Defendant did not file anything in response to the Plaintiff's claim of trespass and the Plaintiff's testimony remains unchallenged and uncontroverted.

12. In the circumstances herein I am satisfied that the Plaintiff has proved her case on a balance of probabilities. Accordingly, I allow the Plaintiff's suit as prayed in the Plaint.

13. The Defendant has 45 days from today to vacate the suit premises failure to which the Plaintiff shall be at liberty to evict him as appropriate.

14. The Plaintiff shall also have the costs of the suit.

**Dated, signed and delivered at Malindi this 16<sup>th</sup> day of July, 2021.**

**J.O. OLOLA**

**JUDGE**