



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 100 OF 2016

WITU NYANGORO RANCH (D.A) COMPANY LIMITED.....PLAINTIFF

VERSUS

NAGEA DAMON DOFOE & 32 OTHERS.....DEFENDANTS

JUDGMENT

1. By a Plaint dated 28th April 2016 Witu Nyangoro Ranch (DA) Company Limited prays for Judgment against the Thirty Three (33) Defendants for: -

- a) A declaration that the invasion by the Defendants on the Plaintiff's piece of land, is illegal, wrongful and unjustified;*
- b) An order directed to the Defendants to with immediate effect vacate all that piece of land reference No. 29274 Title Number CR 57750 situated in Lamu County and to destroy all the structures they have developed therein;*
- c) A permanent injunction restraining the Defendants by themselves, servants, agents and/or employees from trespassing and/or interfering in any way with the Plaintiff's quiet possession, use, occupation, development and proprietorship of the suit property being all that piece of land reference No. CR 57750 situated in Lamu County;*
- d) An order directed to the OCPD Lamu Police Station to ensure compliance with (the) order issued by this Honourable Court; and*
- e) Costs of this suit and interests therein at Court rates.*

2. Those prayers arise from the Plaintiff's contention that at all times material, it was the registered lessee of the suit property situated in Lamu County. The Plaintiff Company avers that sometime in the year 2014, the Defendants invaded the suit property and have remained thereon despite various demands made to them to vacate the same. It is the Plaintiff's case that the said invasion is illegal, unjustified and unwarranted and hence the orders sought herein.

3. Despite service of summons, the Defendants neither entered appearance nor filed a response to the Plaintiff's claim. This suit thus proceeded by way of formal proof.

4. In support of their case, the Plaintiff Company called one witness. PW1- Abdulla Ijema Algi is a resident of Witu and the Chairman of the Plaintiff Company's Board of Directors. Relying on his recorded Statement as filed herein on 4th October 2017, PW1 told the Court the suit property is registered in the name of the Plaintiff. PW1 testified that sometime in the year 2014, the Defendants invaded the suit property forcing them to complain to the Police.

5. PW1 testified that they have owned and occupied the property since the 1960s and that the occupation thereof by the Defendants has caused them distress and that the same is illegal, unjustified and unwarranted. PW1 told the Court the Defendants have been wasting the land and have put up structures thereon without the Plaintiff's permission.

6. I have perused and considered the pleadings as filed by the Plaintiff, the sole testimony of the Plaintiff's director and the evidence adduced at the trial. I have similarly perused and considered the submissions as filed before me by the Learned Advocates for the Plaintiff.

7. From the material placed before me, the Plaintiff is a limited liability company duly incorporated as such on 30th October 1971. The Plaintiff told the Court it is the registered proprietor of all that parcel known as LR No. 29274 (CR 57750) measuring some 32000 Ha and

situated at Nyangoro area within Lamu County. In support of that contention, the Plaintiff produced a Certificate of Title issued to itself for the said parcel of land on or about 20th September 2012.

8. The Plaintiff accused the Defendants of illegally and unlawfully invading the suit property and thereby erecting all manner of illegal structures therein. It was the Plaintiff's case that following the invasion, the Company reported the matter to the Police and that a number of the invaders were subsequently apprehended and arraigned in Court.

9. In support of that accusation, the Plaintiff produced an extract of a Charge Sheet from which it is evident that on 2nd April 2014, some eight (8) of the Defendants were charged at the Garsen Law Courts with the offence of "Trespass upon private land contrary to Section 3(1) of the Trespass Act". While it was not clear what became of the case, the particulars of the Charge accused the Defendants as follows: -

"On the 29th day of March 2014 at Nyongoro Area, Witu Division of Lamu County within Coast Province jointly trespassed into a private land namely Witu/Nyongoro Ranch and hence started clearing the bush for the purposes of farming."

10. Arising from the foregoing, it was apparent that the Defendants had entered and trespassed upon the suit property. Despite being served, the Defendants failed to enter appearance and/or to attend Court to give their side of the story. Having produced a Certificate of Title to the suit property, Section 24 (a) of the Land Registration Act confers absolute ownership of the property to the Plaintiff in the following manner: -

"24. Interest conferred by registration

Subject to this Act-

a) The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land with all rights and privileges belonging or appurtenant thereto...."

b)"

11. At the same time, Section 26 of the said Act obliges this Court to recognize the Plaintiff's title by providing thus: -

"(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 owners, 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)"

12. Arising from the foregoing, I am satisfied that the Plaintiff has clearly discharged the burden of proof and that it has thereby proved its case on a balance of probabilities. The invasion of the Plaintiff's parcel of land by the Defendants is certainly harmful to the Plaintiff's rights as conferred under Section 24 of the Land Registration Act aforesaid.

13. Accordingly, I find merit in the Plaintiff's case and allow the same as prayed.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 16TH DAY OF JULY, 2021

J.O. OLOLA

JUDGE