



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC NO. 37 OF 2018**

**TINGA RAU KALONGO.....PLAINTIFF**

**VERSUS**

**1. BOKI KURWA**

**2. KONDE BOKI**

**3. HARE BEHARE**

**4. HASSAN BEHARE.....DEFENDANTS**

**JUDGMENT**

By a plaint dated 12<sup>th</sup> February 2018 the plaintiff herein sued the defendants jointly and severally seeking for the following reliefs:

- a) The Plaintiff be declared the absolute and indefeasible owner of the suit plot and the Defendants be ordered to vacate forthwith.***
- b) The Defendant's offending structures be demolished forthwith.***
- c) Costs of this suit be borne by the Defendant***
- d) Any other relief that this Honourable Court may deem fit to grant.***

The defendants were served with summons but neither entered appearance nor filed defenses. The plaintiff's case therefore proceeded by way of formal proof. It was PW1's case that he is the registered owner of all that piece of land situate in Kisirwani Location, Kaloleni Sub-location measuring approximately 15 acres or thereabouts which suit land was given to him by his late father Rau Kalongo.

PW1 stated that due to lack of finances he was not able to develop the same and it therefore remained vacant. That the defendants encroached on the suit land and put up illegal structures without PW1's consent.

PW1 further stated that he was appointed administrator of the estate of the late Rau Kalongo of which he produced the documents to that effect. He also stated that he has asked the defendants to vacate to no avail hence the filing of this suit. He urged the court to grant the orders as prayed in the plaint.

**ANALYSIS AND DETERMINATION**

The defendants were served with summons to enter appearance together with the pleadings but neither filed a memorandum of appearance nor a defence. This suit was therefore undefended.

The plaintiff filed an application for injunction dated 3<sup>rd</sup> September 2018 under certificate of urgency which the court heard and granted orders of injunction as prayed against the defendants.

The plaintiff produced a letter from the Chief confirming that the suit land belongs to the plaintiff's late father and letters of administration

for the estate of his father. There being no evidence to controvert the plaintiff's evidence, I find that the plaintiff has proved his case on a balance of probabilities and therefore allowed as prayed. I therefore make specific orders as follows:

a) *The plaintiff is hereby declared as the rightful owner of un- demarcated parcel of land k known as plot Nos 812, 377, 327, 283 and 289 measuring 15 acres or thereabouts.*

b) *The defendants do give vacant possession within 30 days' failure to which eviction order to issue.*

c) *Defendants to pay costs of the suit.*

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 15<sup>TH</sup> DAY OF DECEMBER, 2021.**

**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.***