



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASENO. 41 OF 2013

TWAHIRI FAMAU (Suing as the Administrator of the Estate of

INYABWANA ATHMAN LALI (DECEASED).....PLAINTIFF

VERSUS

AGNES WERIMO

BEATRICE OCHUMBO.....DEFENDANTS

JUDGMENT BACKGROUND

1. By a Plaintiff dated and filed herein on 18th March 2013, Twahir Ali Famau suing as the Administrator of the Estate of the late Inyabwana Athman Lali (the Plaintiff) prays for Judgment against the two Defendants for:-

a) A declaration that the Plaintiff is the lawful owner of all that parcel of land known as Lamu / Hindi/Magogoni/117;

b) An order of demolition of the structures erected by the Defendants on the suit property and vacant possession; and

c) Costs of the suit.

2. Those prayers arise from the Plaintiff's contention that at all times material to this suit, the late Inyabwana Athman Lali was the registered owner of the said parcel of land situated at Hindi within Hindi Division of Lamu County. It is the Plaintiff's case that the Defendants are maliciously occupying the land where they have built residential houses and utilize parts thereof for farming.

3. The Plaintiff asserts that the Defendants actions have led to his loss of user of the premises and that he has as a result suffered damage and loss. Despite various attempts to resolve the matter as well as demands that they vacate the suit property, the Defendants have refused to do so and hence this suit.

4. In a brief Statement of Defence dated and filed herein on 25th April 2013, Agnes Werimo and Beatrice Ochumbo (the Defendants) jointly deny that the Plaintiff is the registered proprietor of the suit property. It is their case that they have been living on the said property as it belongs to their late husband and that they have done so since the year 1993.

The Plaintiff's Case

5. At the trial herein, the Plaintiff called two witnesses in support of his case.

6. PW1- Twahir Lali Famau is the Plaintiff. He testified that he has brought this suit on his behalf and on behalf of the family. PW1 told the Court that the Defendants invaded the land which belonged to his mother Inyabwana Athmani Lali. The property which measures ten acres is situated in Hindi in Lamu County.

7. PW1 testified further that before coming to Court the family had filed Malindi High Court Succession Cause No. 117 of 2011 wherein they obtained a Certificate of Confirmation of Grant on 20th September 2018. PW1 told the Court that he had never seen any documents giving title of the land to the Defendants and urged that his family's claim to the land be upheld.

8. PW2- Omari Mohamed Famau is a cousin to the Plaintiff and his family. He testified that the parcel of land in dispute was initially allotted to the Plaintiff's mother Inyabwana Athman Ali. Later on, someone by the name Morris Chumbo encroached on the land. PW2 together with one Mohamed Ali Baddi were called upon to resolve the dispute but the said Morris Chumbo refused to cooperate.

9. PW2 told the Court that the dispute then proceeded to the District Commissioner's Office Lamu and later to the Area Land Committee. The Committee resolved that the land belonged to the Plaintiff's mother. However by that time, the Plaintiff's mother had passed away and it was the Plaintiff who was following up the matter.

10. PW2 told the Court that even after that resolution, Morris Chumbo refused to vacate the land. When later on the said Chumbo died, the Defendants assumed ownership of the land.

The Defence Case

11. Despite filing a Memorandum of Appearance and a Joint Statement of Defence, the Defendants neither testified nor called witnesses in support of their case.

Analysis and Determination

12. I have perused and considered the pleadings filed herein as well as the testimonies of the two witnesses for the Plaintiff. I have also perused and considered the evidence adduced as well as the Written Submissions filed by Mr. Omwancha, Learned Counsel for the Plaintiff.

13. The Plaintiff has come to Court seeking a declaration that his family is the rightful owners of the suit property. He also prays for an order for the demolition of all structures erected on the suit property.

14. It was the Plaintiff's case that the suit property was initially allocated to his mother Inyabwana Athman Lali before she passed away. It was further the Plaintiff's testimony and that of his cousin witness that the Defendants' husband one Morris Chumbo invaded the said parcel of land sometime back and started utilizing the same. Despite protests by the family of the Plaintiff and various attempts to resolve the dispute through the area Provincial Administration, the Defendants refused to vacate the property and/or come to a compromise with the Plaintiff's family thereby leaving the Plaintiff's family with no choice but to file this suit.

15. In support of his case the Plaintiff relied on a List of Documents

filed herein on 22nd May 2018. That List of Documents includes what the Plaintiff termed as Minutes of a Land Disputes Committee and the decision of the said Committee in support of the Plaintiff as rendered way back on 20th June 1996. There are also various Letters written by the then Lamu District Commissioner in support of the Plaintiff's claim.

16. Through their Advocates on record, the Defendants filed a brief 7 Paragraph Statement of Defence herein on 25th April 2013. In specific regard to the Plaintiff's contention that they are wrongfully and maliciously occupying the suit property, the Defendants respond at Paragraph 4 of their Written Statement of Defence as follows :-

"4. The contents of Paragraph 4 are denied and the Defendants wish to state that they have been living on the said land which belongs to and is registered in their late husband's name since 1993."

17. As it turned out the Defendant did not testify at the trial herein and no evidence was adduced in support of their contention that the land belonged to their late husband and/or that they had been occupying the same for a long period of time.

18. It was however the Plaintiff's testimony that his mother was allocated the parcel of land in dispute sometime in 1988 and that they had employed a caretaker thereon who however left the land sometime in 1992. It was the Plaintiff's case that the Defendant thereafter invaded the parcel of land and that the Plaintiff's family reported the invasion to the Area Provincial Administration.

19. From the material placed before me, it is apparent that as early as 20th June 1996, the Defendant's husband had been ordered to vacate the land on the basis that the same belonged to the Plaintiff's family. It is clear that the Defendants never agreed to move out thus compelling the Plaintiff to come to Court after his mother passed away and he was issued with a Grant of Letters of Administration for her Estate.

20. In the absence of any evidence as to how the Defendants' came to occupy the suit property, this Court had no reason to doubt the Plaintiff's contention that the Defendants had wrongfully and maliciously invaded and occupied their parcel of land.

21. Accordingly and from the evidence adduced by the Plaintiff, this

Court is satisfied that the Plaintiff had proved his case to the required standard.

22. In the premises, Judgment is hereby entered for the Plaintiff as against the Defendants as prayed in the Plaintiff.

23. The Defendants have 60 days from today to demolish the structures erected on the suit property and to grant vacant possession of the same to the Plaintiff.

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

Dated, signed and delivered at Malindi this 30th day of January, 2020.

J.O.OLOLA

JUDGE