



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 165 OF 2015

1. CHIVATSI JONATHAN NYOKA

2. THOMAS KASENA WILLIAM

3. MARY WILLIAM KARISA.....PLAINTIFFS

VERSUS

1. CHARO KOTEA

2. KAHINDI CHARO KOTEA

3. KASENA KATANA KOTEA.....DEFENDANTS

JUDGMENT

1. By a Plaint dated and filed herein on 21st September 2015, Chivatsi Jonathan Nyoka, Thomas Kasena William and Mary William Karisa(the Plaintiffs) pray for Judgment against the three(3) Defendants jointly and severally for vacant possession of all that parcel of land known as Land Title No. Kilifi/Madunguni 'A'/657 and an order of a permanent injunction restraining the Defendants or their servants and agents from accessing, cultivating, constructing on, selling or in any manner dealing with the suit property.

2. The Plaintiffs prayers arise from their contention that at all times material, the 2nd and 3rd Plaintiffs were the Administrators of the Estate of one William Karisa Mwamose who was the registered proprietor of the suit property measuring approximately 1.46 acres. The Plaintiffs accuse the Defendants of trespassing onto the said parcel of land sometime after the 2nd and 3rd Plaintiffs sold the same to the 1st Plaintiff on 1st September 2014.

3. The three Defendants-Charo Kotea, Kahindi Charo Kotea and Kasena Katana Kotea were served with summons to enter appearance on 2nd October 2015. None of them has however entered appearance or filed a Statement of Defence and this matter therefore proceeded by way of formal proof.

4. The Plaintiffs called two witnesses in support of their case at the trial.

5. PW1- Thomas Kasena William is the 2nd Plaintiff herein. He testified that the 3rd Plaintiff and himself are the Administrators of the Estate of William Karisa Mwamose who was the registered owner of the suit property. He further told the Court that on 1st September 2014 they as the Administrators sold the entire parcel of land to the 1st Plaintiff who immediately took possession thereof.

6. PW1 told the Court that despite the sale, the Defendants have been trespassing onto the land during the Planting season and cultivating the same on the false claim that a deceased relative of theirs had purchased the property from one Sikubali Ruwa Mwanza. PW1 further testified that the land belonged to his deceased father and not the said Sikubali Ruwa Mwanza.

7. PW2- Chivatsi Jonathan Nyoka is the 1st Plaintiff. He testified that on 1st September 2014, he bought the suit property from the 2nd and 3rd Plaintiffs and thereafter took possession thereof. PW2 told the Court that prior to the purchase of the land he had conducted a search at the Lands Registry and confirmed that the suit property was registered in the name of William Karisa Mwamose(deceased). The 2nd and 3rd Plaintiffs are the Administrators of the Estate of the said William Karisa Mwamose.

8. PW2 told the Court that the suit property was vacant when he purchased it. However, thereafter, the Defendants have been trespassing

onto the land during the Planting season and cultivating maize thereon. When PW2 confronted the Defendants, they stated that the land belongs to them because a relative of theirs who was now deceased had purchased the land from one Sikubali Ruwa Mwanza..

9. PW2 told the Court that from the due diligence he did, the land had never belonged to the said Sikubali and the Defendants therefore had no colour of right over the property. The Defendants have since resorted to threats of violence and have prevented the 1st Plaintiff from utilizing the suit property.

10. I have perused and considered the pleadings filed herein, the testimonies of the Plaintiffs' witnesses as well as the evidence adduced herein at the trial.

11. The Plaintiffs' case is that the suit property is registered in the name of the late William Karisa Mwamose and that the 2nd and 3rd Plaintiffs as the Administrators of the Estate of the deceased sold the same to the 1st Plaintiff on 1st September 2014.

12. The 2nd Plaintiff is a son of the late William Karisa Mwamose. The 3rd Plaintiff is the mother of the 2nd Plaintiff. They produced in evidence a copy of the Grant of Letters of Administration Intestate of the Estate of the late William Karisa Mwamose who passed away on 14th June 2,000 as Pexh 1. The Plaintiffs further produced a Certificate of Official Search dated 3rd August 2015 indicating that the suit property was registered in the name of the deceased on 12th November 2002.

13. The Plaintiffs further produced in evidence a copy of an Agreement of Sale dated 1st September 2014 indicating that the 2nd Plaintiff and his mother (the 3rd Plaintiff) sold the suit property among other properties to the 1st Plaintiff at a consideration of Kshs 800,000/

14. As it were, the Defendants did not contest the Plaintiffs' claim as they neither entered appearance nor filed a defence. In the absence of any evidence to the contrary, I was persuaded that the Plaintiffs had proved their case to the required standard.

15. In the premises Judgment is hereby entered for the Plaintiffs as against the Defendants as prayed in the Plaint, with costs.

Dated, signed and delivered at Malindi this 23rd day of January, 2020.

J.O. OLOLA

JUDGE