



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 116 OF 2017

HASSAN MELE LUNE.....PLAINTIFF

VERSUS

ACHIENG JOHANA OKWERO

WANDERA JOHANA.....DEFENDANTS

JUDGMENT

Background

1. The Plaintiff-Hassan Mele Lune initially filed this suit in the Principal Magistrates Court at Kilifi against Achieng Johana Okwero (the 1st Defendant) on 15th July 2014. Following an application dated 24th August 2017 made by the Plaintiff, Wandera Johana was enjoined in these proceedings as the 2nd Defendant.

2. By his Amended Complaint dated 10th October 2017, the Plaintiff prays for Judgment against the two Defendants jointly and severally for:-

a. A permanent injunction restraining them from trespassing onto, selling, Charging, leasing or dealing with all that parcel of land known as Kilifi/Kibarani/122 situated at Kibarani in Kilifi (the suit property).

b. Vacant possession of the suit property and the demolition of the entire Defendants' houses or structures erected thereon and their eviction from the property.

3. The Plaintiff avers that at all times material to this suit, he was the registered proprietor of the suit property measuring 1.1. Ha having purchased the same on 14th August 2012. On diverse dates between the said 2012 and the year 2014, the 1st Defendant wrongfully entered into the Plaintiff's property and took possession thereof by putting up permanent and semi-permanent houses.

4. The Plaintiff further avers that sometime in the year 2017, the 2nd Defendant who is a son of the 1st Defendant also trespassed onto the property and commenced construction of a house thereon without the Plaintiff's consent. By reason thereof, the Plaintiff asserts that the Defendants have deprived him of the use and enjoyment of the suit property as a result whereof he has suffered loss and damage.

5. But in their Statement of Defence dated and filed herein on 23rd November 2017, the Defendants deny the Plaintiff's assertions and aver that the Plaintiff fraudulently purchased for the second time the suit property while fully aware that it had already been purchased by the 1st Defendant's husband one Johana Okwero Kudo in 1996 before the land was registered.

6. The Defendants further assert that the suit as filed is a duplication of another suit filed as between the parties at Mombasa being ***ELC Case No. 196 of 2014***. The Defendants accuse the Plaintiff of fraudulently obtaining registration as proprietor of the suit property and urge the Court to dismiss his suit with costs.

The Plaintiff's Case

7. The Plaintiff testified as the sole witness in his case during the trial.

8. Relying fully on his Written Statement as filed herein on 7th March 2018, the Plaintiff testified that he is the registered owner of the suit property measuring about 1.1 Ha. He bought the same from the previous owners –Charo Ngala Mwavuo and Kadzo Charo Ngala on 14th

August 2012.

9. The Plaintiff produced a Copy of the Sale Agreement and stated that he carried out a search at the Kilifi Land Registry and confirmed that the same was registered in the name of Charo Ngala Mwavuo before purchasing the same.

10. The Plaintiff testified that thereafter on diverse dates between the year 2012 and 2014 the 1st Defendant wrongfully entered the land which was hitherto unoccupied and proceeded to erect permanent and semi-permanent houses thereon. Later on, the 2nd Defendant who is a son to the 1st Defendant also moved into the property and commenced construction of a house thereon.

11. The Plaintiff told the Court that the Defendant have since refused to vacate the suit property thereby necessitating the institution of this suit.

The Defence Case

12. The Defendants were absent on the date this matter was fixed for hearing and did not therefore present any evidence at the trial herein.

Analysis and Determination

13. I have perused and considered the pleadings filed herein and the oral testimony of the Plaintiff. I have equally considered the evidence placed before me by the Plaintiff as well as the written submissions of his Learned Counsel Mr. Shujaa Wara.

14. It was the Plaintiff's case that he purchased the suit property from the previous owners vide an Agreement of Sale dated 14th August 2012. Thereafter he applied for and obtained the consent of the Kilifi Land Control Board for the suit property to be transferred to his name. On 27th December 2012, he was issued with a Title Deed for the suit property in his name.

15. The Plaintiff told the Court that when he purchased the suit property, it was vacant and unoccupied and that he conducted a search at the Kilifi Land Registry and confirmed that the Vendors were indeed the owners thereof. He was therefore surprised when later on the Defendants moved into the property and commenced construction of houses thereon.

16. The Plaintiff produced a Copy of the Agreement of Sale and his title deed at the trial herein (Pexh 1 and 2). He told the Court that the Defendants have since constructed permanent and semi-permanent houses on the suit property thereby making it impossible for him to utilize the same as he had been doing before. He also produced photographs of the houses said to have been built by the Defendants.

17. In their Statement of Defence, the Defendants had pleaded that they are beneficiaries of the estate of Johana Okwero Kudoj who passed away on 13th April 2011. The Defendants asserted that prior to this death, the late Johana had purchased the property from Charo Ngala Mwavuo on 16th November 1996.

18. The said Charo Ngala Mwavuo is the same Vendor who the Plaintiff bought the land from and the Defendants accused him of fraudulently conspiring to re-sell the land to the Plaintiff after the death of the deceased.

19. As it were, the Defendants did not testify and/or adduce any evidence to rebut the Plaintiff's case. From their own defence, however, it was clear that they were aware that the Plaintiff had purchased the suit property. There was no evidence placed before me that the legal representatives of the estate have since taken any action against the Vendor or the Plaintiff and they did not file a Counterclaim herein.

20. In the absence of any evidence to contradict that of the Plaintiff's, I had no reason to doubt the Plaintiff's evidence.

21. Accordingly I am satisfied upon perusal of the documents produced by the Plaintiff herein that he has proved that he is the registered proprietor of the suit property and is therefore entitled thereto.

22. In the premises Judgment is hereby entered for the Plaintiff as prayed in the Plaint.

23. The Defendants shall have 60 days from today within which to grant vacant possession in default of which the Plaintiff shall be free to evict them from the suit property.

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

Dated, signed and delivered at Malindi this 13th day of March, 2020.

J.O. OLOLA

JUDGE