



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 93 OF 2017**

**BENSON BAYA YAA** (Suing as the Administrator

of the Estate of **OMAR BAKARI YAA(Deceased)**.....**PLAINTIFF**

**VERSUS**

**1. YUSUF MWERO MWAZENGELE**

**2. THE HON. ATTORNEY GENERAL**

**3. THE REGISTRAR OF TITLES, MOMBASA**.....**DEFENDANTS**

**JUDGMENT**

1. By a Complaint dated 24<sup>th</sup> April 2017, Benson Baya Yaa suing as the Administrator of the Estate of Omar Bakari Yaa (the Plaintiff) prays for Judgment against the three Defendants for:-

***1. A permanent injunction restraining the 1<sup>st</sup> Defendant, his agents or servants from trespassing onto Plot No. 80 situated at Mida Greek and an order that the said parcel of land registered in the name of the 1<sup>st</sup> Defendant be re-conveyed and to his name.***

***2. The Registrar of Lands Mombasa be ordered to effect the changes.***

***3. Costs of this suit.***

2. It is the Plaintiff's case that the suit property was registered in the name of the said Omar Bakari Yaa (deceased) on 17<sup>th</sup> May 1960 and that he had been living on the same with his family until his death in 1983. His family have since continued living on the land as the only home they have known and have developed the same complete with a tourist lodge and resort as well as a camping site.

3. The Plaintiff avers that in late 2016, Yusuf Mwero Mwazengele (the 1<sup>st</sup> Defendant) started sending people to the land seeking to survey the same on the purport that the land belonged to him. Unknown to the Plaintiff the Registrar of Titles Mombasa (the 3<sup>rd</sup> Defendant) had apparently issued the 1<sup>st</sup> Defendant with instruments of title for the said property. It is the Plaintiff's case that issuance of the said title was illegal and the same ought to be cancelled and/or nullified.

4. But in his Statement of Defence dated and filed herein on 13<sup>th</sup> June 2017, Yusuf Mwero Mwazengele (the 1<sup>st</sup> Defendant) avers that the Plaintiff is a complete stranger to the allegation that the land was hitherto registered in the deceased's name. On the contrary, the 1<sup>st</sup> Defendant avers that he is the registered proprietor of the suitland.

5. The 1<sup>st</sup> Defendant admits sending Surveyors to the land and instructing his Advocates to demand vacant possession of the land from the Plaintiff. It is his case that he legally acquired title for the land and denies that the Plaintiff is entitled to the orders sought.

6. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not enter appearance and/or file a Statement of Defence.

7. At the trial herein, the Plaintiff called two witnesses. The Defendants did not however call any evidence in support of their case.

8. PW1-Benson Yaa is the Plaintiff herein. He told the Court that he was the grandson of Omari Bakari Yaa now deceased and that he had the Letters of Administration for his estate. He testified that his grandfather was registered as the proprietor of the land and was issued with a title on 17<sup>th</sup> May 1960. The said title deed was however misplaced when his grandfather died.

9. PW1 told the Court that on 17<sup>th</sup> October 2016, some strange people went to their home demanding to survey the same claiming it was registered in the name of the 1<sup>st</sup> Defendant. PW1 and his family resisted and the strangers went away. Sometime in November 2016, they received a demand letter from the 1<sup>st</sup> Defendant's Advocates asking them to give way to surveyors to survey the land.

10. PW1 testified that his family has since developed the land and that they have a tourist resort and lodges as well as a camping site dealing with eco-tourism on the land. He told the Court that his family was completely unaware of how the 1<sup>st</sup> Defendant came to be registered as the owner of the land and asked the Court to cancel and nullify the registration.

11. PW2- Fredrick Mukutano Ngao is an employee at the Plaintiff's Midda Eco Camp. He told the Court that he has worked at the camp for ten years and that he has never seen anyone else claim to own the land or the camp. However on 17<sup>th</sup> October 2016 PW2 met a group of people who had gone to the camp claiming ownership of the land. Those people were accompanied by the Area Chief.

12. PW2 told the Court the strangers told them the land belonged to the 1<sup>st</sup> Defendant and showed them some documents even though they did not leave any behind.

13. As it turned out the Defendants were absent when this matter came up for hearing and did not therefore tender any oral testimony or adduce any evidence.

14. I have perused and considered the pleadings filed by the Plaintiff and the 1<sup>st</sup> Defendant, the oral testimonies of the Plaintiff's two witnesses and the evidence adduced herein. I have similarly perused and considered the written submissions as filed by the Plaintiff's Learned Advocates.

15. The Plaintiff herein is the grandson of the Omar Bakari Yaa who is said to have passed away on or about 5<sup>th</sup> December 1983. The Plaintiff obtained Letters of Administration Ad Litem for his estate on 7<sup>th</sup> March 2017 just before he instituted this suit.

16. According to the Plaintiff, he was born on the suit property in 1983 and have lived thereon even long after his grandfather who owned the land passed away. It was the Plaintiff's evidence that they have always enjoyed quiet possession of the suit premises wherein they have since built a tourist resort and lodges known as Midda Eco Camp.

17. The Plaintiff was however forced to come to Court after the 1<sup>st</sup> Defendant sent surveyors in the company of the Area Chief to their land in October 2016 claiming to own the same. The Plaintiff and his family became alarmed when they received a formal demand letter from the 1<sup>st</sup> Defendant's Advocates and on carrying a search at the 3<sup>rd</sup> Defendant's Registry came to learn that the 1<sup>st</sup> Defendant had indeed been registered as the proprietor of the suit property.

18. From the material placed before me it was evident that as at 13<sup>th</sup> September 1960, the Plaintiff's grandfather Omar Bakari Yaa was the registered proprietor of the suit property. The said grandfather passed away on 5<sup>th</sup> December 1983. An extract of a Copy of the Provisional Certificate issued to the 1<sup>st</sup> Defendant however shows that on or about 9<sup>th</sup> January 1986, the title was transferred to one Cecilia Peris Wachuka.

19. The said extract further reveals that some four (4) months down the line, the parcel of land was transferred to Messrs Watusi Enterprises Ltd who eventually transferred it to the 1<sup>st</sup> Defendant on 2<sup>nd</sup> June 2016.

20. As it were, the 1<sup>st</sup> Defendant and the other two Defendants did not testify herein and it was unclear how the title for the suit property was transferred from the Plaintiff's grandfather some three years after he had passed away without the involvement of his family.

21. Unless and until that was explained, the Plaintiff and his family who have been in occupation of the land all along remained in my view the lawful proprietors thereof and the actions of the 1<sup>st</sup> Defendant were therefore uncalled for.

22. In the premises, and in the absence of any evidence to the contrary, I am persuaded that the Plaintiff has proved his case to the required standard.

23. Judgment is accordingly entered for the Plaintiff as prayed in the Plaintiff's Complaint with costs.

**Dated, signed and delivered at Malindi this 27<sup>th</sup> day of May 2020.**

**J.O. OLOLA**

**JUDGE**