



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELCA CASE NO. 15 OF 2019

THE CHAIRMAN SCHOOL COMMITTEE

SHAVROTSI PRIMARY SCHOOL.....APPELLANTS

VERSUS

SETH MUTAMBA MUSHILA

MARIKO M. SHILAHO

MAURICE ABUNG'ANA HUNEYI

MURUNGA MAKACHA

LAWRENCE SHITOTE WITABA

LAWRENCE SHITABAUYI SAMBILI

SIMEON MATEKWA MUTAMBO.....RESPONDENTS

JUDGEMENT

Being dissatisfied with the decision of the Chief Magistrate in Chief Magistrate Environment and Land Case No. 66 of 2011 the appellant hereby appeals against the said decision and sets forth the following grounds of appeal.

1. That the learned trial magistrate erred in fact and law in deciding in favour of the respondents and as against the appellant when the respondents had not proved their case on the required standards.
2. That the learned trial magistrate erred in fact and law in deciding the case in favour of the respondents as against the appellant in failing to appreciate and take cognizance of the fact the appellant has been in possession of suit portions/sections of various parcels of land for a period of well over beyond twelve (12) years when the respondents had not raised any objection as to the occupation and usage by the appellant.
3. That the learned trial magistrate erred in fact and law in deciding in favour of the respondents and as against the appellant without considering the fact that the appellant, being a government institution, had extensively developed the suit portions/parts of the suit parcels of land.
4. That the learned trial magistrate erred in fact and law in failing to properly analyzing the evidence on record in reaching his decision.

The appellant prays that this appeal be allowed with costs and the lower court decision set aside and or be varied.

The respondents submitted that the appellants forcefully and without consent of the respondents encroached into their respective land parcels and constructed structures therein and blocked the access to their respective homes and land parcels. That several attempts had been made to settle the matter out of court with little success.

This court has carefully considered the appeal and the submissions therein. I have perused the lower court record and find that it was

established that the appellant had blocked the access road. PW4 the Assistant Land Registrar James Sigona Onari testified that he visited the scene and noted that the place where the road used to pass was fully developed with classrooms and fenced off and there was no road anymore. He advised the school to provide an alternative access road but the school took no action. I find that the learned trial magistrate did not err in fact and law in deciding in favour of the respondents and as against the appellant as the respondents had proved their case to the required standards.

In the case of *Mwanasokoni v Kenya Bus Service* (1982 - 88) 1 KAR 870, it was held that this court is duty bound to revisit the evidence on record, evaluate it and reach its own decision in the matter. This court however, appreciates that an appellate court will not ordinarily interfere with the findings of fact of the trial court unless they were based on no evidence at all, or on misapprehension of it or the court is shown demonstrably to have acted on wrong principles in reaching the findings. The court finds that the decision by the trial magistrate was judiciously arrived at. I find this appeal is not merited and I dismiss it with to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 24TH DAY OF JUNE 2020.

N.A. MATHEKA

JUDGE