



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.97 OF 2014

EGERTON UNIVERSITY.....PLAINTIFF

=VERSUS=

- 1. MOHAMED SALIM HUSSEIN**
- 2. GLADS WANJIKU**
- 3. CHARLES MALI KAINDI**
- 4. JOSEPH KIPLAGAT**
- 5. MARTIN MUSYMI KIOKO**
- 6. JULIUS YERI**
- 7. JOHN OTIENO ONONYO**
- 8. ZAKARIA KARIUKI**
- 9. DAVID NJOROGE KAMAU**
- 10. CHARLES KAHINDI**
- 11. EUNICE KAWIRA**
- 12. PATRICK SAFARI**
- 13. ELIJAH MBUGUA KAMAU**
- 14. HALIMA ALIO BARI**
- 15. JAMES MUNYAU**
- 16. JIDRAF THIONGO**
- 17. JOSEPH KIPLANGAT**
- 18. SUSAN KUBANIA**

19. JOSEPH KASERE
20. STEPHEN WACHIRA
21. PAUL MWANIKI
22. VERONICAH WAMBURA
23. JACKSON MUTHIANI
24. JAMES NGURE
25. JACKSON GITONGA KAMAU
26. PATRICK ISAIHI
27. MTANA MWANDIZWE
28. MONICAH MWENI KENGA
29. JOYCE WARINGA GITAU
30. LEONARD KOMBE NZAI
31. ALISON MIGWI
32. EDWARD KIPLAGAT TOO
33. JERALD MOKAA
34. RUTH MWIHAKI
35. STEPHEN WANGUNYU KUHURA
36. JACKLINE KAMBUA MUSYINAL
37. SARAH NJAMBI MUHURI
38. MILCAH WANJIKU MAINA
39. MATHEW MBARUKA MUTISYA
40. TERESIAH NDITI KITILI
41. NICHOLUS NDAMBUKI
42. KATANA MUTHANGA
43. FRANCIS NJUGUNA
44. SAMSON KARAU
45. AGNES WANJIRU KAMAU
46. SCHOLASTICA MWENDA MSAU

47. SALIM AHMED SHALI
48. MARIAMU MZEE OMAR
49. KARABU KADENGE
50. BENARD KIYALO MWINDE
51. KENEDY KAUNDA MUSYINAL
52. EDWARD KIPLAGAT TOO
53. MOHAMED BWENA
54. ABDALLAH A. AWADH ABUBAKAR
55. BADIRIA MOHAMED ABDALLA
56. LUCY WANGUI WANJOHI
57. RICHARD MACHARIA NDICHU
58. KIGEE KARAU
59. ANN MUSANGI MALUKI
60. MOHAMED FMAU
61. ANTONY KIHARA MBUGUA
62. CONSOLATA KAGURE GITAU.....DEFENDANTS

J U D G M E N T

Introduction:

1. In the Plaint dated 21st May, 2014, the Plaintiff is seeking for an eviction order against the Defendants.
2. The Plaintiff has averred in the Plaint that it is the legal owner of all that parcel of land known as 209163/D Lamu West District measuring approximately 170 hacters pursuant to a letter of allotment dated 30th November 2001.
3. It is the Plaintiff's case that in blatant disregard to the Plaintiff's ownership and interest in the suit land, the Defendants have moved in and proceeded to put up structures in the suit land without the Plaintiff's consent; that the Defendants suit in ELC Civil Suit No. 67 of 2013 was struck out and that the Defendants have refused to move out of the suit land despite the striking out of their suit.
4. In their Defence dated 9th December 2014, the Defendants averred that although their suit in ELC Civil Suit Number 67 of 2013 was struck out, that does not restrain them from pursuing their rights of ownership by virtue of the doctrine of adverse possession; that the suit property is Trust land held by the Settlement Fund Trustees and that they are entitled to it as residents of the area.

The Plaintiff's case:

5. The Plaintiff's Deputy Vice Chancellor, Administration and Finance, PW1, informed the court that the Plaintiff applied to the government for land for research purposes.
6. It was his evidence that the Plaintiff was offered 500 hectares of unalienated land in 1989 for research and training in Lamu District and the Plaintiff moved to secure the title to the suit land.
7. According to PW1, the suit property was surveyed in the year 2007. PW1 informed the court that the Plaintiff is still in the process of acquiring the title deed.
8. It was the evidence of PW1 that on 30th November 2001, the government, vide an allotment letter of the same date allocated the Plaintiff 170 hectares whereafter the Plaintiff paid the requisite fees of Kshs.3,530 in satisfaction of the conditions set out in the allotment..
9. PW1 informed the court that although the Plaintiff was allocated 500 hectares in 1989, it ceded 330 hectares to the squatters, including the Defendants, for settlement.
10. Upon receipt of the letter of allotment, it was the evidence of PW1 that the University fenced off its 170 hectares and that the Plaintiff has always been in occupation and possession of the same.
11. PW1 informed the court that in the numerous meetings that the Plaintiff held with the Defendants, including the meeting of 30th May 2012, the Defendants did not contest or dispute the Plaintiff's right and interest in the suit property and in fact agreed to vacate the land.
12. However, it was the evidence of PW1 that the Defendants proceeded to sue the Plaintiff herein in Malindi ELC Civil Suit Number 67 of 2007 opposing the Plaintiff's intention to evict them. PW1 informed the court that the Defendants' suit was struck out with costs.
13. It was the evidence of PW1 that the Plaintiff is the legal owner of the suit land and that the Defendants are mere trespassers with no known interest or rights in the land.
14. PW1 produced the documents in support of the Plaintiff's claim as PEXB 1-4.
15. In cross-examination, PW1 informed the court that at the time the Plaintiff was allocated the suit property, there were no squatters on the land. However, the Defendants later on put up temporary structures on the land.

The Defendants' case:

16. The Defendants did not testify in this matter. Indeed, the Defence that was filed on 9th December 2014 was never served on the Plaintiff or its advocate.
17. The Plaintiff's suit therefore proceeded as undefended.
18. The Plaintiff's advocate filed submissions and authorities which I have considered.

Analysis and findings:

19. PW1 produced in evidence the letter dated 12th September 2001 by the Plaintiff and addressed to the Director, Land Adjudication and Settlement in which the Plaintiff was seeking to be allocated 500 hectares of land in Lamu as per the recommendations of the District Development Committee, Lamu.
20. In his letter dated 2nd November 2001, the Director of Land Adjudication and Settlement acceded to the said Application. A letter of allotment reference number 209163/D dated 30th November 2001 was then issued to the Plaintiff for unsurveyed land measuring approximately 170 hectares.

21. One of the conditions in the letter of allotment required the Plaintiff to pay to the Government Kshs.3,530. The Plaintiff paid the said amount on 4th December 2001 vide a banker's cheque number 00506998.

22. The evidence before this court shows that the suit property was surveyed on 22nd September 2007 vide survey plan number 470/143.

23. The Defendants have not controverted the Plaintiff's evidence. Indeed, the Defendants filed a suit in this court being Malindi ELC Civil Case No. 67 of 2013 claiming that they are the proprietors of the suit property. This court struck out the Defendants' suit on 19th December 2013 in the following terms;

“The Plaintiffs have not shown or averred in the Plaint their proprietary interests or rights over the suit property which they have admitted to be Government land”.

24. In view of my Ruling and Judgment in Malindi ELC Civil suit no 67 of 2013 and the evidence before me, I find and hold that the Plaintiff is the owner of the suit property. The Defendants are trespassers on the said property and should give vacant possession forthwith.

25. For these reasons, I allow the Plaintiff's Plaint dated 21st, May 2014 in the following terms.

(a) An order of eviction be and is hereby issued against the Defendants to give to the Plaintiff vacant possession of land known as 209163/D Lamu West District measuring approximately 170 hectares.

(b) An order of permanent injunction be and is hereby issued restraining the Defendants, their agents, servants or employees from interfering with the Plaintiff's quiet enjoyment and dealings in land known as 209163/D Lamu West District measuring approximately 170 hectares.

(c) The Defendants to pay to the Plaintiff the costs of the suit.

Dated and delivered in Malindi this 5th day of **June**, 2015.

O. A. Angote

Judge