



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**MALINDI ELC CASE NO. 39 OF 2018**

**OMAR ABDALLA MOHAMED.....PLAINTIFF**

**VERSUS**

**MOHAMED ABDALLA**

**KASSIM ALI SHAHARE**

**ABDULRAHMAN ABDULLAHI.....DEFENDANTS**

**JUDGMENT**

**Background**

1. By a Complaint dated and filed herein on 15<sup>th</sup> February 2018, Omar Mohamed Abdalla (the Plaintiff) prays for Judgment against the three Defendants jointly and severally for: -

*a) Vacant possession of the suit property and eviction therefrom;*

*b) An order of Permanent injunction restraining the Defendants by themselves, their servants and or agents or any person claiming through them, from trespassing upon the suit property and from undertaking construction of any building thereon or dealing with the suit property in any manner whatsoever;*

*c) Costs of this suit and interest thereon at Court rates; and*

*d) Any other relief that this Court may deem just to grant.*

2. The Plaintiff who brings the suit in his capacity as the administrator of the estate of Omar Mohamed Abdallah Baadad (deceased) avers that the deceased was the beneficial owner of the suit property, an unregistered parcel of land measuring 400m by 200m situated at Mokowe in Lamu having bought the same from one Swaleh Khamis Mabruk on 13<sup>th</sup> January 1975.

3. The Plaintiff accuses the 1<sup>st</sup> Defendant of trespassing into the suit property sometime in the year 2014 and thereafter proceeding to sell a portion thereof to the 2<sup>nd</sup> Defendant who in turn sold the same portion to the 3<sup>rd</sup> Defendant. The Plaintiff contends that the 3<sup>rd</sup> Defendant has now without any colour of right commenced construction of buildings on the portion of the land and that despite demands made, the Defendants have failed to stop their trespass and illegal constructions.

4. But in their joint Statement of Defence dated and filed herein on 23<sup>rd</sup> August 2018, Mohamed Abdalla, Kassim Ali Shahare and Abdulrahman Abdullahi (the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively) deny that the deceased was the beneficial owner of the suit property as alleged or at all. The Defendants further deny that they have trespassed onto the Plaintiff's land as alleged and aver that they are in occupation of a completely different parcel of land.

5. The Defendants further assert that the orders sought herein are illusory as the Defendants cannot be enjoined for acts they are not undertaking on the Plaintiff's property and urge this Court to dismiss the suit with costs.

6. As it turned out the Defendants did not participate at the hearing and the Plaintiff proceeded with his case in their absence.

### **The Plaintiff's Case**

7. In support of his case the Plaintiff called two witnesses at the trial.
8. PW1-Omar Mohamed Abdalla is the Plaintiff and a resident of Lamu. He testified that the suit property belonged to his father the late Omar Mohammed Abdalla Baadad who was also known as Sheikh Mohamed Abdalla. His father died on 31<sup>st</sup> May 2010 and the Plaintiff was issued with a Limited Grant of Letters of Administration for his estate by the Chief Magistrates Court at Malindi on 14<sup>th</sup> November 2017 in *Succession Cause No. 18 of 2017*.
9. PW1 testified that his deceased father bought the property from one Swaleh Khamis Mabruk on 13<sup>th</sup> January 1975 and that he is now beneficially entitled to the exclusive use and possession of the same. He accused the 1<sup>st</sup> Defendant of trespassing onto the land sometime in 2014 and proceeding to sell a portion of the suit property to the 2<sup>nd</sup> Defendant who in turn sold it to the 3<sup>rd</sup> Defendant.
10. PW1 told the Court that his efforts to resolve the dispute amicably through the Lamu County Land Management Board and the local administration had failed to bear fruit and the 3<sup>rd</sup> Defendant has since without any colour of right commenced construction of a house on the land with a view to permanently remaining thereon. He urged the Court to evict the Defendants from the land.
11. PW2-Abdulrahman Salim Baaba is a businessman and a resident of Lamu. He testified that he knows the suit property and that the same belongs to the Plaintiff's father who bought the same in 1975. PW2 told the Court that the land which measures 400m by 200m is bordered on the North by land belonging to Jamal Salim, to the South by Dolah Guro Ali's parcel of land, to the West by Mwalimu Dicskon's land and to the East by the main Lamu/Malindi road.
12. PW2 father testified that the Defendants do not own the land but have erected structures thereon which they have refused to remove.

### **Analysis and Determination**

13. I have perused and considered the pleadings filed by both the Plaintiff and the Defendants. I have also considered the oral testimonies from the Plaintiff's witnesses as well as the evidence adduced before me at the trial.
14. The Plaintiff brings this suit as the Administrator of the Estate of his father Mohamed Abdalla Baadad who was also known by the name Sheikh Mohamed Abdalla. From a copy of a Grant of Letters of Administration issued to the Plaintiff on the 14<sup>th</sup> November 2017 (Pexh 1), the said Mohamed Abdalla Baadad passed away on 31<sup>st</sup> May 2010.
15. It was his case that prior to his father's death, he had on 13<sup>th</sup> January 1975 purchased the suit property from one Swaleh Khamis Mabruk. In support of that contention, the Plaintiff produced a hand-written Sale Agreement executed on the said date (Pexh 2) indicating that the deceased acquired the parcel of land measuring 400 x 200 metres at a consideration of Kshs 1,050/- which sum was paid in full.
16. The Plaintiff testified that he has been in possession of the suit property until sometime in 2014 when the 1<sup>st</sup> Defendant entered therein and proceeded to sell a portion thereof to the 2<sup>nd</sup> Defendant. Subsequently, the 2<sup>nd</sup> Defendant also sold that portion to the 3<sup>rd</sup> Defendant who then commenced construction of a building thereon.
17. While the Defendants in their Statement of Defence denied being on the Plaintiff's land, the Plaintiff produced in evidence copies of correspondences (Pexh 3) showing that there were efforts to resolve the dispute between them through the Lamu County Management Board and the local provincial administration. Those correspondences show that the dispute was decided in the Plaintiff's favour.
18. The Plaintiff's witness (PW2) confirmed that indeed the Defendants have put up some structures on the suit property and that they have refused to remove them and or to vacate the land.
19. In light of the Plaintiff's uncontroverted evidence, this Court is satisfied that the Plaintiff has proved his case on a balance of probabilities. Accordingly, Judgment is hereby entered for the Plaintiff as prayed in the Plaintiff.
20. The Plaintiff shall also have the costs of the suit.

**Dated, signed and delivered at Malindi this 25<sup>th</sup> day of September, 2020.**

**J.O. OLOLA**

**JUDGE**