



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**MALINDI ELC CASE NO. 183 OF 2013**

**DANIEL KATUMO NYAMAI**

**(Suing as the Administrator of the Estate of Onesmus Nyamai Kyengo(Deceased).....PLAINTIFF**

**VERSUS**

**1. GILBERT KANUNGU MWAGANDA**

**2. JOANNES CHARO KATANA**

**3. JUMWA KARISA MRYANI**

**4. ZAWADI KIBEVU KIERIA**

**5. PAUL KATANA MWANZA**

**6. JOSEPH NGALA MUNYOKI**

**7. JONATHAN KENGA KATANA alias GONA.....DEFENDANTS**

**JUDGMENT**

**Background**

1. By a Complaint dated 16<sup>th</sup> October 2013 as filed herein on 17<sup>th</sup> October 2013, Daniel Katumo Nyamai suing as the Administrator of the Estate of Onesmus Nyamai Kyengo (the Plaintiff) instituted this suit against the seven Defendants- Gilbert Kanungu Mwanganda, Joannes Charo Katana, Jumwa Karisa Mryani, Zawadi Kibetu Kieria, Paul Katana Mwanza, Josephat Ngala Munyoki and Jonathan Kenga Katana alias Gona praying for:

***a) An order of permanent injunction to restrain the Defendants by themselves, their agents, servants or whomsoever claiming under them from trespassing on, subdividing, selling, transferring, developing, alienating or in any other way dealing with the suit property known as CR 27920 Subdivision No. 176 (Original No. 163/1) of Section IV Mainland North;***

***b) An Order of mandatory injunction to compel the Defendants and their agents, servants or whomsoever claiming under them to vacate the suit property known as CR 27920 Subdivision No. 176 (Original No. 163/1) of Section IV Mainland North;***

***c) An order for vacant possession of the suit property as well as general and exemplary damages for trespass and forceful entry into the property; and***

***d) Costs and interest.***

2. Those prayers arise from the contention by the Plaintiff that his father the late Onesmus Nyamai Kyengo was the registered proprietor of the suit property measuring approximately 48.06 Ha. The Plaintiff accuses the Defendants of using brute force and unlawful threats to invade the suit property and thereafter refusing to vacate the same. On 11<sup>th</sup> October 2013, the Defendants deployed a Caterpillar Grader on the property and commenced the sub-division thereof without the permission or consent of the Plaintiff's family.

3. As it turned out, about a month before the Plaintiff instituted this suit, the seven Defendants had by an Originating Summons dated 2<sup>nd</sup> September 2013 and filed on 3<sup>rd</sup> September 2013 in **Malindi ELC Case No. 155 of 2013** against the Plaintiff herein sought the determination of the following questions in regard to the suit property:

**1) (Whether) the (Defendants) have been in uninterrupted, continuous and peaceful occupation and/or possession of the suit property for more than 12 years;**

**2) (Whether) the (Defendants) are entitled to adverse possession of the suit property measuring 48.06 Ha in the name of Onesmus Nyamai Kyengo;**

**3) (Whether) the possession and occupation by the (Defendants) of the suit property constitutes overriding interests in terms of Section 28 of the Land Registration Act;**

**4) (Whether) damages are adequate remedies to the (Defendants) and/or whether compensation to the (Defendants) by the (Plaintiffs) is a viable remedy;**

**5) (Whether) the (Defendants) are to be registered as owners of the 48.06 Ha in the name of the Plaintiff;**

**6) (Whether) a permanent injunction order (should) be issued against the (Plaintiff) by himself, servants, agents or authorized independent contractors not to demolish or destroy the (Defendants) houses built on the suit property or evict the (Defendants) from the suit property; and**

**7) (Whether) the (Defendants) are entitled to the costs of this suit.**

4. In a Supporting Affidavit sworn by Jonathan Kenga Katana (the 7<sup>th</sup> Defendant) on behalf of all the Defendants in support of the Originating Summons, they aver that they have occupied the suit property for over 100 years continuously, peacefully and uninterrupted and assert that the Plaintiffs rights thereon have since been extinguished and that instead, they have since become entitled to the land under the doctrine of adverse possession.

5. On 27<sup>th</sup> June 2016, the parties recorded a consent which consolidated the Plaintiff's suit with the Defendants' Originating Summons.

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

6. At the trial herein, the Plaintiff (PW1) testified as the sole witness in his case. Relying on his Statement dated 16<sup>th</sup> October and filed herein on 17<sup>th</sup> October 2013, PW1 testified that he is the Administrator of the estate of his father Onesmus Nyamai Kyengo who passed away on 7<sup>th</sup> November 2008. PW1 told the Court that his late father was issued with a Certificate of Title for the suit property on 22<sup>nd</sup> May 1996 and that they have always lived on the land with their larger family since his father purchased the same.

7. PW1 told the Court that the Defendants had used brute force, violence and unlawful threats to invade the property with the 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants erecting structures thereon. The Defendants had since 20<sup>th</sup> May 2013 developed a sub-division scheme in which they have proposed to divide the property into 12 portions of varying sizes. On 11<sup>th</sup> October 2013, the Defendants deployed a tractor on the property and started demarcating and making roads on the property.

8. PW1 testified that he reported the Defendants actions to Kijipwa Police Station and the Defendants have on various occasions been arrested and charged with criminal offences at the **Kilifi Senior Resident Magistrates Court**. PW1 told the Court that the Defendants do not have a permanent residence on the suit property as they have their own properties in surrounding settlement schemes and their intention is only to sub-divide and alienate the land to third parties.

9. PW1 further told the Court that his father had before his death instituted **Mombasa CMM No. 927 of 2004** against the Defendants seeking for vacant possession. That suit was however withdrawn following the coming into effect of new land laws in Kenya.

10. On cross-examination, PW1 testified that he has put up a permanent house on the suitland. He partially grew up on the suitland and in Mombasa having been born in 1969. In that respect, PW1 testified that he knew the 1<sup>st</sup> Defendant's father as he had land next to the suit property. He did not know the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. PW1 told the Court he knows the 4<sup>th</sup> Defendant as his father Kalume lived on the land against the wishes of PW1's father. He also knew the 6<sup>th</sup> and 7<sup>th</sup> Defendants as among those who had invaded the land forcefully. All the Defendants save for the 1<sup>st</sup> Defendant were now living on the suit property.

11. PW1 told the Court that the Defendants have been forcibly cultivating the land. With time they have built houses and dug boreholes on the land. Some of those who had been on the land were compensated and they left. The family has not known peace since 1968 as they have been battling on and off with the Defendants. In 1996, the title deed was processed in the name of PW1's father after he had purchased the land.

12. PW1 further told the Court that there was an agreement that his father would compensate those who were on the land. Some of them came to the land much later by use of brute force. Their family had now been left with only about 20 acres of the 100 acres parcel of land.

#### **The Defence Case**

13. On their part, the Defendants called a total of seven (7) witnesses at the trial.
14. DW1- Gilbert Kanungu Mwanganda is the 1<sup>st</sup> Defendant. He told the Court that he was 44 years old and that the Plaintiff is their neighbor in Plot No. 176 which is about 117 acres. DW1 told the Court he was born on the suitland and that they have been farming thereon; and have buried their relatives on the land. DW1 told the Court he personally occupies about 11 acres of the land.
15. DW1 further told the Court the National Land Commission had visited the land in the company of the area Chief and that they had prepared a Report thereon dated 5<sup>th</sup> December 2013. DW1 told the Court the Plaintiff as their neighbor occupies about 19 acres. When they started looking for title documents, they came to learn that the Plaintiff had title for the whole parcel of land.
16. On cross-examination DW1 denied that his father had sold any land to the Plaintiffs. He admitted that he knew Kennedy Kanungu and that he was his brother and that they stay together on the land. He was aware his brother was charged in a Criminal Case at Shanzu.
17. DW2- Paul Katana Mwanza is the 5<sup>th</sup> Defendant. He told the Court that by his estimates, he occupies about 25 acres of the 118 acre piece of land. He was born on the land some 45 years back and he had developed the same and buried his relatives thereon. DW2 testified that the Plaintiff occupies between 18-20 acres of the land. His Mwanza family that comprises about 30 individuals were mentioned in a Report prepared by the National Land Commission(NCC) in respect of the land.
18. On cross-examination, DW2 conceded that his father is Katana Mwanza. He however told the Court he had never seen the document which shows that his father was compensated with Kshs 6,000/- to vacate the land in 1977. He lives on the land because he inherited it from his father.
19. DW3- Zawadi Kibetu Kieria is the 4<sup>th</sup> Defendant herein. She told the Court she was born on the property in the year 1973. DW3 told the Court that her family consisting of Kaingu Kadhengi, Katana Kadhengi and Kalume Kadhengi occupy about 50 acres of the 100 acre piece of land. Her father Kalume passed away in 2001. Within their 50 acres, they have built their homesteads and have cultivated and developed the land.
20. On cross-examination DW3 told the Court she only heard for the first time that the land has a title when the Plaintiff brought them to Court. There was however another dispute with his grandfather some five or six years before this suit was filed.
21. DW4- Josephat Ngala Munyoki is the 6<sup>th</sup> Defendant. He told the Court he had lived on the land since he was born some 54 years earlier. It was his father who first settled on the land having come from upcountry. His father was given 12 acres of the land by two elders he found on the land. Both his father and mother passed away in 2014 and were buried on the suitland. DW4 told the Court the Plaintiff only occupies about 20 acres of the land.
22. On cross-examination, DW4 told the Court his father had moved from up-country in 1960 and that he was given the land by a Mr. Kalume and one Katana. He did not know whether the two were squatters on the land they offered to his father. He however conceded that if the two elders were squatters, then even his father was a squatter.
23. DW5- Jonathan Kenga is the 7<sup>th</sup> Defendant. He told the Court his Kadhengi family occupies about 50 acres of the land. He told the Court he was born some 54 years earlier on the suitland. He testified that he only came to know of the Plaintiff's title when he was accused of trespass in a Kilifi Court.
24. On cross-examination, DW5 told the Court that the Court in the Kilifi Case determined that they had a right to live on the land. He however conceded that he was fined Kshs 10,000/-. In 2006, he was charged with assaulting the Plaintiff's sister Tabitha. She had brought goats to graze on DW5's land. He told the Court the land in dispute was bequeathed to himself by his father.
25. DW6- Josephat Matheka is an employee of the Ministry of Lands. He told the Court that on 7<sup>th</sup> November 2013, the Chair National Land Commission had written to his office about the land in dispute. The Area Chief then did a Ground Report dated 5<sup>th</sup> December 2013 showing the land was occupied by seven families. DW6 then forwarded the letter to the National Land Commission on 29<sup>th</sup> January 2014.
26. On cross-examination, DW6 stated that he participated in preparation of the Report as he had been on the ground for three days and had established the history of the land. He did not however sign the Report.
27. DW7 – Mathias Juma Lewa is the Senior Assistant Chief, Kanamai Location. He has held that office for some 22 years. He told the Court he is the one who wrote the letter dated 23<sup>rd</sup> December 2012 to the National Land Commission. He prepared the same with DW6 and the Area Assistant County Commissioner. The letter was stating the position they had found on the ground.
28. DW7 told the Court he knew all the seven (7) families on the land as he had been born around that area some 54 years earlier. He started witnessing the dispute when he was about 16 years old.
29. On cross-examination, DW7 told the Court he did not know the Plaintiff's father very well but he knew the Plaintiff's mother and the rest of the family. He started seeing them around that area in 1978-1979. He knew one Mohamed Salim Omar to be staying on a different parcel of land. He told the Court he did not know how the land was sold or bought as he was not involved. He denied favouring any side of the dispute in his report.

### **Analysis and Determination**

30. I have perused and considered the pleadings filed by the parties herein, the oral testimonies of the witnesses and the evidence adduced by either side at the trial herein.

31. The Plaintiff brings this suit as the Administrator of the Estate of his father the late Onesmus Nyamai Kyengo. In this respect he has exhibited a copy of a Limited Grant of Letters of Administration ad Litem issued to him on 2<sup>nd</sup> May 2013 in **Mombasa High Court Probate and Administration Cause No. 107 of 2009**. A perusal of the Grant reveals that the Plaintiff's father passed away on 7<sup>th</sup> November 2008.

32. It is the Plaintiff's case that his deceased father was the registered proprietor of the suit property- a vast parcel of land measuring 48.50 Ha situated along the Kikambala Area along the Mombasa-Malindi Road and more particularly registered and known as CR No. 27920 Subdivision No. 176 (Original No. 163/1) of Section IV Mainland North. From the material placed before me, the Plaintiff's father bought the suit property from one Salim Omar Salim Basty in 1964. He was however only issued with a title in his name on 25<sup>th</sup> May 1996. The Plaintiff told the Court that his father and his family had lived on the land ever since he purchased the same and that the Plaintiff was indeed born and raised thereon.

33. It was further the Plaintiff's case that when his father bought the property, he had fully compensated all the parties who had been utilizing the same for one purpose or the other. Thereafter, the concerned parties had ceased all activities on the land and moved away therefrom. The Plaintiff however told the Court that some years before he filed this suit, the Defendants had forcefully and unlawfully invaded the land and started erecting new structures thereon and thereby prompting the institution of this suit.

34. On their part, the seven Defendants do not deny that they are in occupation of the suit property. It is however their case that they have been in uninterrupted occupation and possession of the same for close to 100 years. It is the Defendants' case that their grandparents were the first to reside on the land and that by dint of their long, uninterrupted occupation and possession thereof, the Plaintiff's interests thereon had been extinguished and that they had instead acquired the land or the portions they respectively occupy under the doctrine of adverse possession.

35. The Defendants told the Court that they have been residing on and cultivating the suit property over a long period of time beginning with their grandfathers and that the same was their ancestral land. They told the Court that over that period, they have buried their grandfathers, their fathers and some of their children on the property.

36. At the same time the Defendants disputed the fact that the Plaintiff's father had bought the suit property as stated by the Plaintiff. On the contrary, they asserted that they had themselves made various attempts to have the suit property registered under their names since the Country attained independence. It was therefore a major surprise for them to discover that the property had been registered in the name of the Plaintiff's deceased father yet they had been using and cultivating the same for a long period of time.

37. From the material placed before me, it was not in dispute that the suitland was registered in the name of the Plaintiff's deceased father on 22<sup>nd</sup> May 1996. While some of the Defendants in their testimonies herein denied knowledge of such registration until the time the Plaintiff filed his suit, it was evident that the existence of the title was the very reason the Defendants had filed their Originating Summons against the Plaintiff seeking to be declared as the owners of the land by virtue of adverse possession. As a matter of fact, the said Originating Summons being **Malindi ELC No 155 of 2013** was instituted a month before the Plaintiff filed his claim herein.

38. It was also not in dispute from the material placed before me that both the Plaintiff and the Defendants occupied different portions of the suit property. While some of the estimates by the Defendants as to the acreages they occupied appeared to me exaggerated, both sides were in agreement that as at the time this dispute came to Court, the Plaintiff and his family only occupied about 18 to 20 acres of the property whose actual acreage is in the region of 118 acres.

39. It is trite that a person claiming adverse possession must prove actual, open and exclusive possession of the land claimed. Explaining those elements in **Mtana Lewa –vs- Kahindi Ngala Mwangandi (2015) eKLR**, the Honourable Ouko JA stated thus:

***“In terms of Section 7, 9, 13, 17, 37 and 38 of the Limitation of Actions Act, the title of a registered owner of land will be extinguished and vested in a third party who proves that he has been in possession of the land continuously and uninterrupted for a period of 12 years; that such possession has been open and notorious to the knowledge of the owner; and that the third party has asserted a hostile title and dispossessed the true owner.*”**

***It must be borne in mind that before one can claim title to land by adverse possession and apart from proving 12 years of uninterrupted, open and peaceful possession, certain strictures must be satisfied. Those strictures are summarized in the Latin Maxim, nec vi, nec clam, nec precario, that, one's possession has not been through use of force, not in secrecy and without the authority or permission of the true owner.”***

40. In support of their claim to long occupation and use of the land, the 6<sup>th</sup> Defendant's Josephat Ngala Munyoki who testified herein as DW4, told the Court that he was not only born on the suitland some 54 years ago but also that his father Timothy Munyoki was one of the first settlers on the land after arriving from up-country. DW4 in cross-examination told the Court that his father was given some 12 acres of the land by two elders whom he named as Mzee Kalume and Mzee Katana.

41. That testimony appeared to me to be supported by some of the documents produced by the Defendants as their exhibits at the trial. In one of them, a letter dated 26<sup>th</sup> October 1965 copied to the Chief Mtwapa and one Katana Mwanza, the then District Commissioner Kilifi addresses Salim Mohamed Omar Mohamed who is the one said to have sold the land to the Plaintiff as follows:

**“Re: Wahamiaji**

***Ujumbe wa Wahamiaji waishio shambani mwako wamenilalamikia ya kuwa wewe unaikata na kuharibu miti yao. Sina budi nikueleze na kukufahamisha vizuri nia ya Serikali kuhusu wahamiaji. Kama ujuavyo iliamuliwa kwamba wahamiaji wa zamani (kama hawa wako) walikubaliwa kuishi pale pahali walipo na kutumia matunda ya miti yao bila ya kizuiizi. Hata hivyo hawakubaliwi kupanua mashamba yao au kuleta fujo ya aina yoyote. Na wewe kadhalika huna ruhusa ya kuwasumbua au kuwatesa kwa aina yoyote kama unavyo fanya hivi sasa.***

***Ningependa unihakikishie hutaendelea na vitendo kama hivi ambavyo hutuletea fujo na kutofamiana baina yako na wahamiaji. Pia inakubidi ufahamu uwamuzi Zaidi kuhusu shauri hili la wahamiaji ulitazamiwa kutoka serikali kuu.***

42. In another letter dated 10<sup>th</sup> February 1968, the same District Commissioner wrote to Messrs Anjarwalla Advocates in regard to the same vendor referred to as Salim Mohamed Omar Basty cautioning the said Katana Mwanza against trespassing upon Salim's property. The District Commissioner (DC) further refers in that letter to a visit he had made to the disputed farm to listen to the dispute between the said Katana and Mr. Salim and he tells the Advocates that he had come to the conclusion that until alternative land was found for Mr. Katana Mwanza, the only outstanding dispute was on the ownership of bananas and tree crops.

43. It was further apparent from the correspondence that Salim Mohamed Omar was not content with the DC's advise and he proceeded to file a ***Civil Suit No. 2902 of 1968 at Mombasa***. Alarmed by this turn of events and the repercussions on other squatters in the region, the DC again by a letter dated 20<sup>th</sup> August 1968 addressed to Anjarwalla Advocates expressed his displeasure and warned that the case would cause an "outburst" of eviction cases of long term squatters in the District. He therefore appealed for the case lodged before the ***Mombasa Resident Magistrates Court*** to be withdrawn.

44. While it was not clear from the correspondence whether or not the case was withdrawn as per the DC's letter which was interestingly, also copied to the Magistrate, it was evident that the Plaintiff's father had by that time taken ownership of the land. In a "Petition" dated 15<sup>th</sup> November 1970 addressed to President Jomo Kenyatta, the Plaintiff's father an employee of what was then known as Posts and Telegrams gives a detailed history of how he had acquired the land having lived thereon since 1945 and how the Kilifi Land Control Board had frustrated his efforts to get the land on account of the acute squatter problem in the area.

45. The tussle between the Plaintiff's father and the Kilifi District Land Control Board is indeed confirmed in yet another letter authored by the Secretary of the Board dated 24<sup>th</sup> December 1970 addressed to an office then known as the Commissioner of Squatters. By that letter, the Board conveys to the Commissioner the message that during a meeting held on 9<sup>th</sup> October 1970, the Board had suggested that in order to find a solution to the dispute, the Plaintiff's father as the new buyer would be requested to sub-divide sections occupied by the two main squatters, namely Kalume Kathengi and Katana Mwanza and sell these portions to them because at that time, the Plaintiff's father was unable to pay compensation for their trees. The letter by the Board was indeed copied to the said Kalume Kathengi, Katana Mwanza and the Plaintiff's father Nyamawe Kyengo.

46. A perusal of the Ground Report prepared by the Kainamai Senior Assistant Chief Mathias Juma Lewa (DW7) dated 5<sup>th</sup> December 2013 for the National Land Commission reveals that save for one or two families, the occupants of the suit property remain as they were in 1970 with the families of Kalume Kathengi and Katana Mwanza as the Defendants herein being accused by the Plaintiff of having invaded the land.

47. Arising from the foregoing, it was evident to me that indeed the dispute herein was as old as the parties themselves. While the Defendants herein claimed they were not aware of the Plaintiff's title, it was evident that the very reason their fathers had not been registered as the owners of the land was the fact that the Plaintiff's father was duly recognized to have acquired the same and that their removal therefrom had only been stopped by the Provincial Administration on account of the likely effect that their removal would have had on the likely ripple effect for other squatters and the claim that they were owed compensation on the basis of some trees crops they had planted on the land.

48. Given the history as traced from the arrival of the 6<sup>th</sup> Defendant's father on the suitland, their claim that the suit property was their ancestral land was tenuous and unsupported by any historical or other evidence. This Court was indeed at a loss how they could claim the suit property under adverse possession while at the same time maintaining that the same was their ancestral land.

49. At any rate, it was apparent to me that the Defendants have never had a peaceful and uninterrupted possession of the suit property at any one time. The registered owner made various attempts to evict them. There have been numerous civil and criminal cases against the Defendants on account of the land. From their own testimonies before this Court, the Defendants conceded that the registered owner of the land and his family have been living on and continue to occupy some 20 acres of the land. That is not someone who has been dispossessed of his property.

50. As was stated by the Honourable Angote J in ***Haro Yonda Juaje –vs- Sadaka Dzeno Mbaruro & Another (2014) eKLR***:

*"The occupation by a Claimant must be with the clear intention of excluding the owner of the property. One must therefore have the animus possidendi to succeed in a claim for adverse possession. One must show that he either dispossessed the owner of the land or the owner of the land discontinued his possession. Dispossession is where a person comes in and drives another out of the land while discontinuance of possession is where a person in possession goes out and another person takes possession.*

*The mere fact that one has been in possession of land for more than 12 years is not enough. In fact, the assertion by a Claimant that he was not aware that the land was registered in favour of some persons against whom time could start running means that he did not have the animus possidendi to acquire the land by way of adverse possession and he can therefore not be able to succeed to defeat the title of the true owner."*

51. As it were, having overcome the challenges of registration after the initial acquisition of the land, the Plaintiff's now deceased father was eventually registered as the proprietor of the suit property and was issued with a Certificate of Title on 22<sup>nd</sup> May 1996. The effect of such registration is given at Section 26 of the Land Registration Act as follows:

***“The Certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the Proprietor shall be taken by all Courts as prima facie evidence that the person named as Proprietor of the land is the absolute and indefeasible owner.....and the title of that proprietor shall not be subject to challenge, except:-***

***a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or***

***b) Where the Certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

52. On the material placed before me, I have no reason to conclude that the title obtained by PW'1s father on 22<sup>nd</sup> May 1996 was acquired illegally, unprocedurally, corruptly or is otherwise tainted with fraud. Despite the Defendants assertions that they have lived on the suitland for decades, they have not provided any evidence that they have tried to impeach the Plaintiff's title and or that they took any steps to acquire title in their name prior to the institution of the Originating Summons in September 2013.

53. As it were, the Defendants' occupation of various undefined portions of the suit land was, and is, without any right or title to the land. Save for the claim for compensation for fruits and trees by their predecessors, those predecessors had no title and were trespassers. They are therefore also trespassers and are in no position to resist the Plaintiff's claim. Their long occupation as trespassers however cannot give them any protection against the Plaintiff's claim for possession as the registered owner of the land. Similarly, any developments carried out on the suitland by the Defendants was done at their own peril. As it were, they have not in the matter before me made any claim for any form of compensation and this Court cannot address itself to a matter not before it.

54. In the result, I did not find any merit in the Defendants Originating Summons dated 2<sup>nd</sup> September 2013. On the contrary I am satisfied that the Plaintiff has proved his case on a balance of probabilities and that he is not only entitled to the same but that he has a Constitutional right to utilize the same within the confines of the law and without any interference from the Defendants. Accordingly, I make the following orders.

***a) The Defendants Originating Summons dated 2<sup>nd</sup> September 2013 is hereby dismissed.***

***b) An order of permanent injunction is hereby issued forthwith restraining the Defendants by themselves, their agents, servants or whomsoever claiming under them from trespassing on, sub-dividing, selling, transferring, developing or in any other way dealing with the suit property known as CR 27920 Subdivision No. 176 (Original No. 163/1) of Section IV Mainland North.***

***c) The Defendants are hereby granted 90 days within which to voluntarily vacate the suit property in default of which an order of mandatory injunction shall issue forthwith compelling the Defendants, their agents, servants or whomsoever claiming under them to vacate the suit property known as CR 27920 Subdivision No. 176 (Original No. 163/1) of Section IV Mainland North; and***

***d) The Plaintiff shall have the costs of his suit and the Originating Summons.***

Dated, signed and delivered at Malindi this 18<sup>th</sup> day of September, 2020.

J.O. OLOLA

**JUDGE**