



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 113 OF 2013

IBRAHIM KATANA KARISA.....PLAINTIFFS/APPLICANTS

=VERSUS=

SULUBU HAZIZI.....DEFENDANT/RESPONDENT

JUDGMENT

Introduction

1. The Plaintiff moved this court by way of a Plaint dated 1st July 2013. In the Plaint, the Plaintiff has averred that his late father owned parcel of land number 319 located within Magarini settlement scheme in Kilifi County which the Defendant has continued to interfere with.
2. It is the Plaintiff's averment that the Defendant has from the year 2012 been living on the suit property and has completely obstructed the deceased's beneficiaries from accessing the suit land. The Plaintiff is praying for an order evicting the Defendant and for a permanent injunction restraining the Defendant from interfering with the suit property.
3. Although the Defendant was served with the Summons to Enter Appearance, he did not enter appearance or file a Defence. The matter proceeded for formal proof on 4th March 2013.

The Plaintiff's case:

4. The Plaintiff, Pw1 informed the court that the suit property belongs to his late father. The Plaintiff produced the Certificate of Death in respect to his late father and the limited letters of administration as exhibits 1 and 2 respectively. The Plaintiff also produced as exhibits number 4(a) -(e) the receipts issued by the Settlement Fund Trustee showing the payment his late father paid in respect to plot number 485 and plot number 319.
5. Pw1 also produced the copy of the charge by the Settlement Fund Trustee dated 27th July 1982 for plot number 485 and another charge document for plot number 319 as exhibits 5 and 7 respectively.
6. It is the Plaintiff's testimony that the Defendant is using the suit property and has prevented the Plaintiff and his siblings from using the land.
7. The Plaintiff's mother, Pw2, informed the court that her late husband is the owner of the suit property and that the Defendant has no right to remain on the land.

Analysis and findings:

8. The Plaintiff produced in evidence the receipts showing that his late father was allocated parcel of

- land number 319 in Magarini settlement scheme by the Settlement Fund Trustee (SFT). The SFT charged the suit property on 9th December 1996. According to the charge document which was produced as exhibit number 7, the principal amount that was payable to SFT was Kshs. 6,865. The Plaintiff's late father paid to SFT Kshs.6,780 being the loan repayment on 17th January 2012.
9. Although the Plaintiff did not produce any title document in respect to the suit property, the documents produced in court shows that the suit property was allocated to Plaintiff's father by the Settlement Fund Trustees who charged it. The Plaintiff's father made payments to the SFT to offset the amount due. That evidence was not challenged by the Defendant.
10. In the circumstances, I find that the Plaintiff has proved his case on a balance of probabilities. I therefore allow the Plaintiff's Plaint dated 1st July 2013 as prayed.

Dated and delivered in Malindi this **8th** day of **May**, 2014.

O. A. Angote

Judge