



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MALINDI

ELC CASE NO. 44 OF 2018

1. LEWA TSUI DENJE

2. MARTIN GARERO

3. SALIM NZAI GONDA

4. OMAR CHITSAVA GONDA

5. HAMISI GONDA

6. DONALD WASHE

7. HENRY KAPUCHU

8. KABAHA KAVU.....PLAINTIFFS

VERSUS

NAOMI L. HENRY.....DEFENDANTS

JUDGMENT

Background

1. By a short 7-Paragraph Plaintiff dated 16th February 2018 as filed herein on 20th February 2018 Lewa Tsui Denje on behalf of himself and Martin Garero, Salim Nzai Gonda, Hamisi Gonda, Donald Washe, Henry Kapuchu and Kabaha Kavuu (the Plaintiffs) prays for: -

a) A declaration that the Plaintiffs are the rightful owners of Parcel Nos 1062, 1063, 1064, 1074, 1083, 1075, 1076, 1077, 1018 and 1081 Kaliangombe/Jimba;

b) A permanent injunction (to issue) against the Defendant restraining her, her servants or agents from sub-dividing the said parcels of land;

c) Alternatively, that the Defendants do allow the Plaintiffs to enjoy quiet possession of the said parcels of land situated at Kaliangombe/Jimba; and

d) The costs of this suit be provided by the Defendants.

2. Those prayers arise from the Plaintiffs contention that at all times material they were the owners of the said parcels of land. It is their case that the Defendants has no right whatsoever to sub-divide the same and or to transfer the same to her name.

3. But in her Statement of Defence dated 12th July 2018, Naomi L Henry (the Defendant) refutes the Plaintiff's claim and avers that the suit property is her family's property and that the Plaintiffs are not entitled to any of the orders sought.

The Plaintiffs' Case

4. At the trial herein, the 1st Plaintiff-Lewa Tsui Denje (PW1) testified as the sole witness on behalf of his co-Plaintiffs.

5. PW1- testified that they bought the parcels of land in dispute from one Henry Nyaa Daniel who was the father of the Defendant. PW1 told the Court that he bought his own Portion in 1995 and that at that particular time, the Defendant was not there as she had gotten married and was staying at her husband's place.

6. PW1 testified that when the Defendant came back, she started demanding to survey the parcels of land. PW1 told the Court that the Defendant filed a complaint against the Plaintiffs before the Land Adjudication Office and at the County Commissioner's Office but the verdict went against her. She then demanded that everyone who had bought land from her father should surrender half an acre to herself. The Plaintiffs refused and filed the suit in Court.

7. PW1 told the Court that title deeds for their parcels have since been processed but they are unable to acquire the same in the absence of a Court order.

The Defence Case

8. The Defendant and her Counsel were absent on the date fixed for hearing and they did not therefore call any evidence in support of the Statement of Defence filed herein.

Analysis and Determination

9. I have perused and considered the pleadings filed by the parties, the oral testimony of the Plaintiffs' sole witness and the evidence placed before me.

10. The suit herein was filed by the 1st Plaintiff in person and, as would be expected, their pleadings were not as clear as would be required. From a perusal of his brief Plaintiff, the Affidavit filed in support of the Notice of Motion seeking orders of injunction dated 16th February 2018 and the oral testimony of the 1st Plaintiff on the basis of their claim is the fact that they separately entered into various sale agreements with the Defendant's father Henry Nyaa Daniel to purchase various portions of his land. They accuse the Defendant of trying to take away the land from themselves.

11. Attached to the Plaintiff is a document titled Authority to Act which document reads as follows: -

“We the undersigned being the Plaintiffs/Applicants in this case do hereby authorize, allow and empower Lewa Tsui Denje to plead, testify and produce documents in Court, act or otherwise pursue the case for and on our behalf.”

12. However, while the said document has listed the names of the 2nd to 8th Plaintiffs as giving authority to the 1st Plaintiff, the said Lewa Tsui Denje, to act on their behalf, the “authority to Act” is neither signed nor thumb-printed by the 2nd to 8th Plaintiffs herein and I was unable to arrive at the conclusion that they had given any authority for the 1st Plaintiff to act on their behalf.

13. In support of their claim to entitlement to the ten parcels of land listed as Nos. 1062, 1063, 1064, 1074, 1083, 1075, 1076, 1077, 1080 and 1081 Kaliangombe/Jimba the Plaintiffs produced herein various hand-written Sale Agreements between the said Henry Nyaa Daniel and various personalities named therein as follows: -

Purchaser	Date of Agreement	Acreage
	14.5.95	2 Acres
1. Lewa Tsui Denje	20.2.2000	Not indicated
2. Martin Garero		
3. Mama Umazi Beloka	12.2.1997	1 Acre
4. Umazi Wa Katimbo		
5. Donald Washe Arthur	6.2.1997	1 Acre
	6.8.1989	4 Acres

14. Other than for the 1st and 6th Plaintiffs whose names are discernible from the list of the purchasers, the other people named therein do not appear in the list of the Plaintiffs herein and no explanation was given as to whether or not they may have relations with those named herein as the Plaintiffs.

15. In view of the fact as I have explained above that there was nothing to show that the 6th or any other Plaintiff had authorized the 1st Plaintiff to institute this suit on their behalf, I was unable to consider their claims.

16. In respect to the 1st Plaintiff however, it was clear to me that he had purchased a parcel of land measuring two acres from the said Henry Nyaa Daniel at a consideration of Kshs 45,000/- on 14th May 1995. It was also clear to me from a perusal of the agreement that the 1st Plaintiff had been granted vacant possession of the land from the said date.

17. While the 1st Plaintiff did not state which of the ten listed parcels he was claiming, from a perusal of the Demarcation Sheet dated 17th October 2012 from the Kaliangombe/Jimba Land Adjudication Office, produced herein, it was clear to me that the Portion of land adjudicated to the 1st Plaintiff and his family was Portion No. 1081.

18. It was also apparent from a perusal of the Statement of Defence filed herein that the seller- Henry Nyaa Daniel had since passed away and that his daughter who is the Defendant herein was laying a claim to the land. That being the case, it was clear that there was danger of alienation of the suit property and that the 1st Plaintiff stands to suffer loss and damage unless the prayers sought herein are granted.

19. In the premises, I am satisfied that as far as the 1st Plaintiff is concerned, his case has been proven to the required standard and I hereby enter Judgment as follows: -

a) A declaration is hereby made that the 1st Plaintiff is the rightful owner of Land Parcel No. 1081 Kaliangombe/Jimba.

b) A permanent injunction is hereby issued restraining the Defendant, her servants or agents from sub-dividing and or dealing in any manner whatsoever with the said Parcel No. 1081 Kaliangombe/Jimba.

c) The 1st Plaintiff shall have the costs of this suit.

Dated, signed and delivered at Malindi this 15th day of October, 2020.

J.O. OLOLA

JUDGE