



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 286 OF 2016**

**MOHAMED OSMAN NOOR.....PLAINTIFF**

**VERSUS**

**1. CHARO KAZUNGU**

**2. FATUMA MWANDORO**

**3. KITUNGA ZAWADI**

**4. MWALIMU KARISA MANGI**

**5. SULUBI KARISA MANGI**

**6. MANGI KARISA KITUNGA**

**7. KAZUNGU MANGI KITUNGA.....DEFENDANTS**

**JUDGMENT**

1. By a Complaint dated 26<sup>th</sup> October 2016 and filed herein on 27<sup>th</sup> October 2016, Mohamed Osman Noor (the Plaintiff) prays for Judgment against the seven Defendants for:-

- a) An order for forceful eviction from the suit premises;***
- b) Cost of this suit;***
- c) Interest thereon at Court rates; and***
- d) Any other or further order that this Court may deem just to grant.***

2. It is the Plaintiff's case that he purchased the suit premises being Plot No. 7652 situated at Mtangani Village Malindi, from one Samson Kazungu Kalama on 17<sup>th</sup> July 2002. Sometime in the year 2014 however, the Defendants invaded the suit premises and started squatting thereon. Efforts to have the said squatters to move from the premises through the use of the office of the Area Chief have failed and the Plaintiff was therefore left with no alternative but to file this suit.

3. Despite Service of Summons and other pleadings herein, the Defendants have failed to enter appearance and/or to file a defence to the Plaintiff's case. This matter accordingly proceeded by way of formal proof.

4. Testifying as PW1 in his case, the Plaintiff told the Court that he is the registered owner of the suit property known as Portion 7652 Malindi. He told the Court that he purchased the property from one Samson Kazungu Kalama on 17<sup>th</sup> July 2002 vide an indenture dated the same day. He produced a Copy of the Indenture as Plaintiff Exhibit 1.

5. It was the Plaintiff's case that before buying the property, he inspected and surveyed it and ensured that there were no persons residing thereon. He then fenced off the land with a barbed wire. Sometimes in the year 2014 however, he was informed by the Vendor Samson Kazungu Kalama who still resides nearby that some squatters who had been evicted from a nearby property had invaded his plot and

commenced construction of structures thereon.

6. PW1 proceeded to the suitland where he confirmed that indeed the Defendants herein had entered and trespassed into his property. PW1 made several reports to the village elder, the Area Chief as well as the District Officer Malindi. The Defendants however adamantly refused to vacate the suit property.

7. The Plaintiff subsequently caused his then Advocates to write to the Defendants and demand their exit from the land but the Defendants refused to take heed.

8. PW2- Liwali Fondo Birywa was the village Elder Mtangani. It was his testimony that the suit property belongs to the Plaintiff following his purchase thereof from the said Samson Kazungu Kalama in the year 2002. He told the Court that when PW1 bought the property, there were no other persons on the land. PW2 further told the Court that following the invasion of the Defendants into PW1's land, a Court Process Server went to him with demand letters and requested his help to serve the same. He helped to serve the letters upon the Defendants but they still refused to vacate the suit property.

9. I have considered the pleadings herein, the Plaintiff's testimony and that of his witnesses. I have equally perused and considered the evidence placed before me as well as the submissions by Ms Ruttoh, Learned Counsel for the Plaintiff.

10. Trespass may be defined as any unjustifiable intrusion by one person upon the land in the possession of another. In a claim for trespass, the onus lies on the Plaintiff to prove that he is the owner of the suit property and that the defendant has invaded and occupied the same without any justifiable cause.

11. In this regard, it was the Plaintiff's testimony that he purchased the land on 17<sup>th</sup> July 2002 from one Samson Kazungu Kalama. The Plaintiff produced in evidence an Indenture (Pexh 1) dated the same day indicating that Portion No. 7652 measuring approximately 3.802 Ha was sold and conveyed to him.

12. As it were, Section 24(a) of the Land Registration Act, 2012, provides that the registration of a person as the proprietor of land vests in that person the absolute ownership of that land together with all rights and privileges associated with that status. It is apparent from the material placed before me that the Plaintiff enjoyed those rights and privileges associated with his ownership of the suit property from the time he purchased the same until sometime in the year 2014.

13. According to the Plaintiff, when he had purchased the land, he fenced the same using barbed wire to ward off would-be invaders as he did not reside near the suit property. However, sometime in the year 2014, he was called by the person who sold to him the land and was told that some people had invaded the land and commenced building structures thereof. When he visited the land, the Plaintiff confirmed that indeed the Defendants had invaded his land and had built temporary residential structures thereon.

14. The Defendants neither entered appearance nor defended themselves against the claims made by the Plaintiff. The Plaintiff's pleadings and testimony therefore remain uncontroverted. As the absolute proprietor of the suit property, the Plaintiff is entitled to enjoy rights and privileges associated with such ownership which includes exclusive use, possession and enjoyment thereof without interference by any third party.

15. In the circumstance, I am satisfied that the Plaintiff has proved that the Defendants have unlawfully entered his property. Having unlawfully entered the Plaintiff's property, the Defendants are trespassers on the suit property and the Plaintiff is entitled to Judgment against them for eviction as sought in the Plaintiff.

16. Accordingly I hereby enter Judgment for the Plaintiff as against the Defendants in terms of Prayers 'a', 'b' and 'c' of the Plaintiff filed herein on 27<sup>th</sup> October 2016.

17. Order accordingly.

**Dated, signed and delivered at Malindi this 21<sup>st</sup> day of February, 2019.**

**J.O. OLOLA**

**JUDGE**