

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 281 OF 2016

ATHMAN KUTA.....PLAINTIFF

VERSUS

BATODO HANGA.....DEFENDANT

JUDGMENT

1. By a Complaint dated and filed herein on 19th October 2016, Athuman Kuta (the Plaintiff) prays for orders of eviction against the Defendant as well as a permanent injunction to restrain him from trespassing, and or encroaching upon all that parcel of land known as Kilifi/Mavueni 3B/992 (the suit property).

2. It is the Plaintiff's case that he is the registered and absolute owner of the suit property. He accuses the Defendant of trespassing thereon and putting up illegal structures which he has refused to remove to-date.

3. The Defendant Batodo Hanga did not enter appearance and/or file a defence to the Plaintiff's claim and this matter therefor proceeded by way of formal proof.

4. Testifying as the sole witness in his case, the Plaintiff told the Court that he has been the registered owner of the suit property since the 1990s when it was registered in his name. Sometime in 2016, the Defendant who is his neighbour started interfering with the property. Initially, the Plaintiff went and reported the matter to the Chief but the Defendant refused to stop the constructions he was carrying out on the land. In support of his case, the Plaintiff produced a copy of a Title Deed issued in his name on 10th December 2014.

5. I have perused and considered the pleadings herein. I have also considered the Plaintiff's sole testimony and the evidence adduced before the Court.

6. The Plaintiff avers that he is the registered owner of the suit property and accuses the Defendant of encroaching thereon and proceeding to construct certain structures thereon without his consent.

7. While I was not left in doubt that the Plaintiff is the registered owner of the suit property it was not clear to me how the Defendant had interfered with the Plaintiff's land to warrant the issuance of the orders sought herein. A perusal of a brief statement filed herein by the Plaintiff only shows that the Defendant was interfering with the suit property. The nature of that interference is neither disclosed in the Statement nor in the Oral testimony given before this Court.

8. As a result, I was not persuaded that the Defendant has infringed on the Plaintiff's rights in a manner that would require any protection by the Court.

9. Accordingly and even though this suit was undefended, I did not find any merit therein. The same is struck out with no order as to costs.

Dated, signed and delivered at Malindi this 30th day of July, 2019.

J.O. OLOLA

JUDGE