



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT EMBU

E.L.C. CASE NO. 235 OF 2014

(FORMERLY KERUGOYA ELC NO. 91 OF 2013)

PIUS MULWA MASAI (Suing as legal representative of the

***Estate of MASAI KABOLELYA*).....PLAINTIFF**

VERSUS

NZEMBI MUSILI.....1ST DEFENDANT

GREGORY MAINGI.....2ND DEFENDANT

PATRICK KITAKA.....3RD DEFENDANT

VENDI A.K.A. BAKARI.....4TH DEFENDANT

JOSEPH MBUVA.....5TH DEFENDANT

DOMINIC MBULA MUTIE.....6TH DEFENDANT

JUDGEMENT

1. By a plaint dated 16th December 2010 the Plaintiff sought the following reliefs against the Defendants:

- a. A permanent injunction restraining the Defendants, their agents, servants or employees or any other person under their authority from entering parcel No. 1247.*
- b. An eviction order be issued against the Defendants, their servants and/or agents.*
- c. Costs of the suit and any other relief the court may deem just and expedient.*

2. The basis of the said suit was that the Defendants had entered and trespassed upon *Plot No. 1247* (hereinafter *the suit property*) and commenced construction thereon without the consent and authority of the owner who was deceased. The Plaintiff's suit was filed in his capacity as the legal representative of the estate of the deceased owner, *Masai Kabolelya*.

3. The 1st, 2nd, 3rd, 5th and 6th Defendants filed their separate statements of defence denying the Plaintiff's claim. They denied any trespass on the suit property but claimed that they had been allocated the suit property by the County Council of Mbeere. They pleaded that there was nothing preventing the defunct local authority from allocating them or any other person the suit property. They also pleaded that the Plaintiff was guilty of laches and acquiescence and that the suit was time-barred.

4. When the suit came up for hearing on 8th July 2019 only the Plaintiff testified. The Defendants did not attend court and neither did their advocate despite the hearing date having been taken by consent on 13th June 2019.

5. The Plaintiff adopted his witness statement dated 27th September 2012 as his evidence in chief. He also produced the documents listed in his list of documents dated 27th September 2012 as exhibits P1-P3. He asked the court to grant him the prayers sought in the plaint.

6. The court has considered the pleadings, documents and evidence on record. The Plaintiff's case is that the suit property was allocated to his deceased parent during the Land Adjudication process. The Plaintiff produced a letter dated 18th February 2009 from the Land Adjudication Office to that effect. The Plaintiff's evidence was not controverted by the Defendants at the trial. The court accepts it as such.

7. The court notes that the Defendants did not lodge any counterclaim against the Plaintiff. They did not also file any documents to demonstrate their interest, if any, in the suit property. The court, therefore, finds that the Plaintiff has proved his case on a balance of probabilities against the Defendants.

8. The upshot of the foregoing is that the Plaintiff's suit hereby succeeds. There shall be judgement for the Plaintiff against the Defendants in the following terms:

- a. An eviction order be and is hereby issued against all the Defendants, their agents, servants, employees or any other person claiming through them from the suit property i.e. parcel No. 1247 within Karaba Adjudication section.
- b. The prayer for injunction is hereby declined since the Defendants have all along been in possession.
- c. The Plaintiff is hereby awarded costs of the suit against the Defendants.

9. It is so decided.

JUDGEMENT DATED, SIGNED and DELIVERED in open court at EMBU this 18th DAY of JULY, 2019.

In the presence of Ms. Kung'u for the Plaintiff and in the absence of the Defendants.

Court Assistant Mr. Muinde

Y.M. ANGIMA

JUDGE

18.07.19