



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 193 OF 2014

MOHAMED SALIM MSELLEM.....1ST PLAINTIFF

VERSUS

HALIMA MSHAMU.....DEFENDANT

JUDGMENT

1. By a Plaint dated and filed herein on 17th October, 2014 Mohamed Salim Msellem (the Plaintiff) prays for Judgement against the Defendant for: -

i) A permanent injunction order restraining the Defendant, her servants, agents, family members and any other person from trespassing and entering onto the Plaintiff's land situate at Mbwajumwali in Lamu near Sheebwana's Mosque measuring approximately one (1) acre and from constructing houses thereon and demolition thereof (sic)

ii) Costs of the suit

iii) interest

2. Those prayers arise from the Plaintiff's contention that he bought the said parcel of land sometime in the year 2008 from one Fatuma Salim at a consideration of Kshs.20,000/-. In the same year he bought the land, the Plaintiff discovered that the Defendant was trespassing onto the land and was in the process of constructing a permanent house thereon.

3. The Plaintiff avers that despite warnings to the Defendant and complaints made to the Provincial Administration, the Defendant has continued with the said construction and the Plaintiff stands to suffer loss and damage.

4. But in her Statement of Defence dated and filed herein on 20th July, 2016, Halima Mshamu (the Defendant) denies that the Plaintiff bought the suit property as alleged. She asserts that the suit property belongs to herself after she bought the same from some three individuals, namely – Nyakale Aroi, Sahalia Aroi and Mwana-Amina Aroi.

5. The Defendant further asserts that contrary to the Plaintiff's allegations, she was only developing her legally acquired parcel of land and the Plaintiff had no reason factual or legal to stop her from constructing her house.

6. At the trial herein, the Plaintiff testified as the sole witness in support of his case. He told the court that he bought the suit property from his sister Fatuma Salim in the year 2008. Fatuma had in turn bought the property from her father on 10th July, 1992. The Plaintiff told the court that he has however not used the land since then as his brother Ali has a building thereon.

7. The Plaintiff testified that the Defendant was trying to take over the land by putting up a building thereon on the authority of the Area Chief.

8. On the date fixed for Defence hearing, both the Defendant and her counsel did not appear in court and the Defence case was thereby marked as closed.

9. I have perused and considered the pleadings filed herein, the oral testimony of the Plaintiff and the evidence adduced at the trial herein.

10. It is the Plaintiff's case that he is the owner of the un-surveyed plot said to be measuring 1 acre and situated at Mbwajumali near Sheebwana's Mosque in Lamu. The Plaintiff testified before this court that he bought the said parcel of land from his sister Fatuma Ali for

Kshs.20,000/= in 2008.

11. According to the Plaintiff, the Sale Agreement he executed with his sister who is now deceased got misplaced. By a letter dated 11th March, 2014, addressed to the Area Chief Kizingitini Location, the Children of the Plaintiff's deceased sister confirm that they are aware of the sale and that the Plaintiff is the genuine proprietor of the said piece of land.

12. In support of the fact that her sister had owned the parcel of land before selling it to himself, the Plaintiff produced a copy of an Agreement dated 10th July, 1992 between his sister Fatuma Salim Msallam and her father Sallim Msallam indicating that she was sold the land for Kshs.6,000/=

13. Arising from the foregoing and in the absence of any evidence on the contrary by the Defendant who failed to testify and/or adduce any evidence herein, I am satisfied that the Plaintiff has proved his case to the required standard on a balance of probabilities.

14. Accordingly Judgment is hereby entered for the Plaintiff as against the Defendant as prayed in the Plaintiff.

15. The Defendant shall have 45 days within which to move out of the suit property and to demolish any structures thereon failure to which the Plaintiff shall be at liberty to demolish the same at her costs.

16. The Plaintiff shall have the costs of this suit.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 22ND DAY OF NOVEMBER, 2019

J.O. OLOLA

JUDGE