



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 199 OF 2017

1. JULIUS MWABONJE MURIMA
2. CHARO KAZUNGU MURIMA
3. ALLAN KAI MURIMA.....PLAINTIFFS

VERSUS

1. GARAMA KATHENGI
2. JOHANN A KATHENGI
3. CHENGO KATHENGI
4. SULUBU KATHENGI.....DEFENDANTS

RULING

1. By an application dated 5th October 2017 and filed herein on 9th October 2017, the three Plaintiffs are praying for orders of injunction to restrain the four Defendants from trespassing on, encroaching, sub-dividing, selling off, constructing upon, alienating, or wasting a certain unregistered parcel of land situated at Kadzuhoni within Gongoni.

2. The application is supported by an affidavit sworn by Julius Mwabonje the 1st Plaintiff and is premised on the grounds stated on the body thereof as follow:-

a) That the Plaintiff is the lawful owner of all that unregistered parcel of land situated at Kadzuhoni within Gongoni in Kilifi County;

b) That despite the Plaintiff's protests and in blurt disregard of the Plaintiffs pleas, warning against the said activities, the Defendants have deliberately, illegally and unlawfully embarked on a series of serious and destructive harvesting of salt over the Plaintiffs land;

c) That the Defendants have no legal claim or any colour of right over the land and unless the said activities are stopped the Plaintiffs stand to suffer great loss and irreparable damage.

3. In a Replying Affidavit sworn on behalf of his co-defendants, the 2nd Defendants Johanna Kathengi avers that while it is true that the Plaintiffs' late brother bought a portion of land from one Katana Mkonge, the said land borders the Defendants' own land and it is therefore not true that they have encroached upon the Plaintiffs' land.

4. The Defendants state that the original parcel of land measuring 5.5. acres belonged to their late father Kathengi Mkamba who sold a portion measuring one acre to the said Katana Mkonge sometime in 1978.

5. In addition the Defendants accuse the Plaintiffs of trying to rely on an agreement to which they were not parties and aver that the Plaintiffs have no authority to bring this suit as the land they claim belonged to their late brother yet the Plaintiffs have brought the suit without getting letters of administration to represent the estate.

6. I have considered the application and the response thereto. I have equally considered the oral submissions made before me by the

Learned Advocates representing the parties.

7. The basis of the Plaintiffs claim herein is that the defendants have invaded an unregistered parcel of land situated at Kadzuhoni area within Gongoni sub-location. According to the Plaintiffs, their brother Nelson Mrima (now deceased) purchased the land from one Katana Mkonge in 1981 and has since been using the land. It is their case that the Defendants have since invaded the land wherein they have gone on a salt extraction spree to the detriment of the Plaintiffs.

8. While it is not clear from the pleadings and documents attached thereto as to when the Plaintiffs' brother died, a letter dated 26th January 2017 from the Assistant Chief Gongoni Sub-location (annexture A2 to the Supporting Affidavit) confirms "To whom it may concern" that Nelson Mwachilumo Mrima is deceased.

9. As it were the Defendants who are apparently the Plaintiffs' neighbours also state the fact that their land neighbours one that belonged to the Plaintiffs' brother who is deceased. They however protest that even if the Plaintiffs were pursuing the land on behalf of their brother the Plaintiffs have no authority to file the suit on the basis that they have no Letters of Administration.

10. The Plaintiffs did not contest the Defendants' position that as at the time they instituted these proceedings, they were not in possession of a grant of letters of administration for the estate of their deceased brother. It would appear to me from their pleadings and submissions herein that as far as the Applicants were concerned, all they needed to do as beneficiaries of the estate was to move to Court for purposes of preserving their brother's land and preventing further wastage thereof.

11. The position in law as regards locus standi in succession matters is however well settled. A litigant is only clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession. In *Otieno -vs- Ougo & Another (1986-89) EALR 468*, the Court of Appeal stated that:-

".....an administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception."

12. Arising from the foregoing, and in the absence of any proof that the Plaintiffs obtained the requisite letters of administration before instituting the present suit, the same is incompetent.

13. Accordingly I hereby strike out both the Plaintiff's application dated 5th October 2017 as well as the entire suit as filed on 9th October 2017 with costs to the Defendants/Respondents.

Dated, signed and delivered at Malindi this 31st day of July, 2018.

J.O. OLOLA

JUDGE