



**Mwarabu & another v Mwenda (Environment & Land Case
98 of 2016) [2018] KEELC 4907 (KLR) (18 July 2018) (Judgment)**

Andrian Kaumi Mwarabu & another v Denis Mwenda [2018] eKLR

Neutral citation: [2018] KEELC 4907 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 98 OF 2016**

LN MBUGUA, J

JULY 18, 2018

BETWEEN

ANDRIAN KAUMI MWARABU 1ST PLAINTIFF

MWARABU KIRIMI NICHOLAS 2ND PLAINTIFF

AND

DENIS MWENDA DEFENDANT

JUDGMENT

Background

1. The plaintiffs are wife and son of the late M'Amburuka M'Mboroki alias Robert Mwarabu. They are bringing this suit as the legal representatives and administrators of the estate of Robert Mwarabu. Robert Mwarabu owned a plot no. 57 B at Kianjai market which is occupied by the defendant. Plaintiffs claim that defendant was a tenant of deceased and hence he should pay rent or be evicted. On the other hand the defendant avers that he is a son of deceased and he therefore has a right to occupy the land.

The evidence

2. Both PW 1 and PW 2 (mother and son respectively) have stated that defendant is in occupation of the suit plot. They however claim that defendant was paying rent when Robert Mwarabu was alive. PW 1 also added that she had known defendant for a period of about 20 years and during this time, defendant had been there (on suit land).
3. In support of their case, plaintiffs produced the limited grant in respect of the estate of Robert Mwarabu (deceased) issued to Andriana Kaumi and Mwarabu Kirimi. Plaintiffs also produced a letter of allotment indicating that plot no. 57B was allocated to Robert Mwarabu.



4. Defendant on the other hand alleges that he is a son of deceased (Robert Mwarabu). While adopting his statement dated 9.8.2016, defendant (DW 1) stated that plaintiffs are his step mother and step brother respectively. He contends that he was given the property by his father in the year 2009 and therefore as a child of deceased he ranks equally before the law with the other children of deceased who are also in occupation and possession of deceased's property.
5. DW 1's mother testified as DW 2 and she gave an account of how she sired DW 1 with Robert Mwarabu in 1979 but she (DW 2) did not get married to Mwarabu. Defendant was apparently raised by DW2's parents for a while but when her parents died, Robert Mwarabu took DW 1 to the property at Kianjai market where he gave him a house in the plot to stay there. When defendant got married in year 2009, Mwarabu apparently gave DW 1 possession of the suit plot No. 57 B at Kianjai market so as to establish his home there. That is where DW 1 stays to date.
6. Both DW 1 and DW 2 deny that DW 1 was ever a tenant of Robert Mwarabu.

Determination

7. Having considered all the issues raised herein including the rival submissions of the parties, I find that the occupation of plot no. 57 B at Kianjai Market by DW 1 is not disputed. The issue to determine is whether DW 1's occupation of the suit plot was on the basis of a tenancy relationship between him and Robert Mwarabu or whether he, defendant is a son of Robert Mwarabu.

Tenancy Relationship

8. It is the plaintiffs who claim that DW 1 was a tenant of Robert Mwarabu. In paragraph 4, 5 and 6 of the plaint, the plaintiffs have tabulated the terms of the tenancy relationship between defendant and Mwarabu. However no evidence to that effect was produced. In particular, Plaintiffs did not produce any tenancy agreement or any receipts to indicate that DW 1 was paying rent to Robert Mwarabu. In light of the foregoing, I conclude that DW 1 was not occupying the suit premises as a tenant of Robert Mwarabu.
9. Was DW 1 occupying the suit plot on the basis of being a son to deceased?. To answer that question, one would need to invoke the law applicable in management and distribution of the estate of a deceased person in Kenyan. The law applicable to succession of immovable property in Kenya in respect of deceased person is found in the [law of succession Act](#).
10. The plaintiffs desire to manage the estate of the deceased person. They therefore need to assert their claim in a succession cause. Likewise, defendant's claim to the property of the deceased on the basis that he is a son of deceased can only be determined in a succession cause.
11. I conclude that plaintiff's claim is not merited. The same is dismissed with costs to defendant.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF JULY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Mr. Kariuki holding brief for B.G Kariuki for plaintiffs

Miss Njenga holding brief for Gichunge for defendant

Plaintiffs

Defendant



HON. LUCY. N. MBUGUA
ELC JUDGE

