



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC NO. 30 OF 2013**

**ABDUL WAHID ALI ABUBAKAR.....PLAINTIFF/RESPONDENT**

**VERSUS**

**OSMAN ABUBAKAR T/A OSMAN WOODWORKS**

**ISSA ABUBAKAR**

**MOHAMED ABUBAKAR.....DEFENDANTS/APPLICANTS**

**JUDGMENT**

**BACKGROUND**

1. By a Plaintiff filed herein on 26<sup>th</sup> February 2013, Abdul Wahid Ali Abubakar prays for:-

***a) An eviction order directing the Court Bailiff with the assistance of the OCPD Malindi to remove all structures standing on the suit property and hand over vacant possession of the same to the Plaintiff;***

***b) Costs of this suit;***

***c) Interest on (b) above at Court rates;***

***d) Any other relief this Court deems fit to grant in the circumstances.***

2. It is the Plaintiff's case that at all material times, he has been the lawful and/or beneficial owner of all that unsurveyed parcel of land bearing the number 10061 and situated next to Raghbir hardware, Malindi, while the 1<sup>st</sup> Defendant has been a licensee on the said Plot wherein he operates a workshop (Osman Woodwork) together with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

3. The Plaintiff asserts that he is desirous of developing the said plot and consequently on or about 26<sup>th</sup> April 2012, he issued a 30 days' notice to the Defendants terminating the tenancy but the Defendants have refused and/or failed to comply hence this suit.

4. In response to the suit the 3<sup>rd</sup> Defendant filed a Written Statement of Defence herein on 16<sup>th</sup> March 2015. In the said Statement of Defence the 3<sup>rd</sup> Defendant denies that any notice was served as alleged by the Plaintiff. The Defendant further avers that sometime in 2001, they drafted an architectural drawing to expand their workshop which plan was duly approved by the then Municipal Council of Malindi but the Plaintiff refused to approve construction on the basis that the 3<sup>rd</sup> Defendant may apply to be granted orders of adverse possession to the land.

5. It is the 3<sup>rd</sup> Defendant's case that he has no other place to carry on his business as he has operated the workshop on the same spot for more than 60 years and he has not defaulted in paying rent.

6. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not file any pleadings herein.

7. During the trial the Plaintiff called one witness while the Defendant called two witnesses in support of their case.

## **THE PLAINTIFF'S CASE**

8. PW1-Abdulwahid Ali Abubakar in his testimony told the Court that the property in dispute is registered in the name of his mother and her sister. He produced in Court as Pexh 1 a copy of the Indenture dated 22<sup>nd</sup> May 2002. He also produced as Pexh 2 a copy of the Deed Plan for the Plot dated 18<sup>th</sup> June 1995.

9. PW1 testified that his mother passed away in 2007. He obtained a Grant of Letters of Administration after filing Succession Cause No. 52 of 2009.

10. He told the Court that the property is currently occupied by the three Defendants who are brothers and who operate a business thereon known as Osman Woodworks. The property was let to them by the Plaintiff's grandparents and they have been there as tenants. The Defendants used to pay rent of Kshs 1000/- per month but due to problems of paying land rent when his mother was sick, PW1 told the Court that he raised the rent to Kshs 5000/- per month. The Defendants however refused to pay the increased rent.

11. PW1 testified that before his mother's death, she had filed a case before the Business Premises Tribunal in 2006 and the Defendants were told that their tenancy had been terminated. By a letter dated 26<sup>th</sup> April 2012, (pexh 7) the Plaintiff gave a formal notice terminating the tenancy. But the Defendants went quiet and refused to comply.

12. PW1 told the Court that his family continues to incur expenses by paying rates every year in respect of the Plot. The Defendants had only an oral agreement with the Plaintiff's mother and they used to pay rent as they pleased. The Plaintiff stopped collecting rent after he issued the notice. PW1 told the Court that he now desires to develop the land and to put up a permanent structure but the Defendants have refused to vacate.

## **THE DEFENCE CASE**

13. DW1- Mohamed Abubakar on his part testified that his father had been paying rent to the Plaintiff's grandfather since 1947. His father used to pay rent of Kshs 100/- but when the Plaintiff's mother died, the Plaintiff wanted to hike the rent from the then Kshs 500/- to Kshs 5,000/- per month. They have since been paying the sum of Kshs 1,500/- through their Advocate's office.

14. DW1 told the Court that he did not understand why the Plaintiff refused to approve the plan to enable him build a showroom on the property. That is how he could have made more money to pay the rent. DW1 further told the Court that he has a structure on the land which was built in 1947. It is a factory in itself with a three-phase power line. He has been in the land for 67 years and he should be allowed to take over the land.

15. In his further testimony on 19<sup>th</sup> July 2017, DW1 told the Court that while indeed the land is registered in the Plaintiff's name, he should be given an opportunity to buy the same as he has invested for a lifetime in it. He testified that he has nowhere else to go. When they started using the land, it was just bush. It is his father who built the workshop and it is his wish to settle permanently on the land.

16. DW2-Omar Faraj Mabrouk told the Court that he knew the 3<sup>rd</sup> Defendant's father, one Abubakar Ebrahim Osman for many years. The 3<sup>rd</sup> Defendant's father hired DW2 as his artisan to construct the business premises on the plot in dispute sometimes in 1947 or thereabouts. The 3<sup>rd</sup> Defendant's father operated the business until his death when his sons and others took over. He testified that the 3<sup>rd</sup> Defendant has been running the business on the Plot in dispute for many years.

## **ANALYSIS AND DETERMINATION**

17. I have considered the testimony and evidence placed before me by both parties herein. I have also considered the submissions filed herein by the Defendants. The Plaintiff did not file any submissions.

18. The facts regarding the disputed parcel of land are fairly clear. The Plaintiff avers that the Defendants are Licensees on the parcel of land number 10061 Malindi where they operate a Workshop named Osman Woodwork. It is the Plaintiff's case that he is desirous of developing the land and that the Defendants have refused to deliver to him vacant possession of the premises.

19. On his part, the 3<sup>rd</sup> Defendant avers that his family built the workshop on the land way back in the 1940s and that they have remained in occupation since then. It is their case that they have always paid rent to the Plaintiff and having invested heavily in the suit premises pursuant to an oral agreement they had with the Plaintiff, they should be allowed to remain on the land to continue with the business.

20. It is not in dispute that the Defendants herein were put in possession of the rented premises by the Plaintiff's family. The land in question is registered in the name of the Plaintiff's mother who passed away in 2007. The Plaintiff produced in evidence a Certificate of Grant of Letters of Administration for the estate of his deceased mother (Pexh 11) and the Defendants do not deny that he is the rightful owner of the suit property.

21. As it were there was no proper tenancy agreement in place as the Defendants occupied the property by dint of an 'oral' agreement purportedly entered into by the parents of the 3<sup>rd</sup> Defendant and those of the Plaintiff. By a notice in writing issued to the Defendant on 26<sup>th</sup> April 2012, the Plaintiff gave clear notice of his intention to bring the arrangement which allowed the Defendant to operate a workshop on his land to an end.

22. A tenant who has been put into possession cannot in my view challenge the landlord's title on the basis that he has stayed on the land for a long period. While it may as well be that there was a tenancy at will created with the consent of the landlord, a tenant cannot become a

tenant at will by refusing to vacate the demised premises, more so when an express notice terminating the same has been served upon him.

23. In my considered view, the Defendant's defence and testimony before me did not raise any reasonable ground as to why they should not vacate the suit property. It is the duty of the Court to ensure that no individual is prevented from taking possession and/or enjoying their property. A tenant cannot impose himself on a landlord however long the tenancy lasts.

24. Accordingly, I find merit in the Plaintiff's case and I enter Judgment for the Plaintiff as against the Defendants jointly and severally as prayed in the Plaint.

25. The eviction orders granted at Prayer 'a' shall take place upon expiry of 30 days from today.

26. Orders accordingly.

**Dated, signed and delivered at Malindi this 28<sup>th</sup> day of September, 2018.**

**J.O. OLOLA**

**JUDGE**