



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC NO. 81 OF 2007**

**LYDIA NJOROGE RAMA.....PLAINTIFF**

**VERSUS**

**WILLIAM FIKIRI.....1<sup>ST</sup> DEFENDANT**

**HEZRON MWADORO.....2<sup>ND</sup> DEFENDANT**

**LAWRENCE MAZERA.....3<sup>RD</sup> DEFENDANT**

**CHARO DAI.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By a Complaint filed herein on 9<sup>th</sup> October 2007, the Plaintiff Lydia Njoroge Rama prays for a permanent prohibitory injunction against the Defendants restraining them from trespassing into, disposing off, leasing out, charging or in any other manner interfering with Plot No. 10 situated at Kwandomo area, Malindi. In addition, the Plaintiff prays for an order of eviction to issue against all the four Defendants evicting them from the said Plot No. 10, Kwandomo area, Malindi.

2. The said prayers are premised on the Plaintiff's contention at paragraphs 3 to 10 of the Complaint that she is the registered owner of the said Plot having purchased the same for good value from one Arthur Jeremiah Tsumah on 9<sup>th</sup> November 1978. It is the Plaintiff's case that upon the said purchase, she took possession of the land and started using the same for cultivation and other purposes. However when she started constructing a permanent building on the land, some strangers went and demolished it and stole her building materials. It is further her case that she later came to know the Defendants when they instituted a complaint through the District Officer Malindi claiming ownership of the said Plot No. 10 Malindi.

3. In a Statement of Defence filed herein on 26<sup>th</sup> November 2007, the four Defendants jointly and severally deny the Plaintiff's claim and state that they have since the year 1946 lived in the said Plot No. 10 Malindi together with their families.

4. The Defendants further deny that the Plaintiff bought the parcel of land from the said Arthur Tsuma and/or that she took vacant possession thereof pursuant to the sale. It is their case that the Plaintiff has always been aware of the fact that they reside on the parcel of land in dispute even before the year 1991 and it is therefore their contention that this suit is time-barred and the same ought to be dismissed with costs.

5. At the hearing hereof, the Plaintiff testified on her own behalf while the Defendants did not call any witness being absent on the date of the hearing.

6. Testifying in support of her case, the Plaintiff told the Court that she bought the Plot in contention in 1978 from one Arthur Jeremiah Tsumah. She produced an Indenture dated 18<sup>th</sup> September 2013 showing that she bought the land.

7. The Plaintiff testified that upon purchase of the land, she used the same for farming before later on building a 3-bedroomed house thereon around 1993-1994. However before she could complete the building, the Defendants went to the land and demolished it. The Plaintiff told the Court that she reported the incident to the police. The police however took no action and she therefore decided to file this case for appropriate redress.

8. She further testified that she has not since been able to use the land due to threats from the Defendants. While she does not know who is currently using the land, she told the Court that there is a building which has since been constructed thereon as per the photographs produced

in her List of Documents. She accordingly urged the Court to help her get back her land.

9. I have considered the pleadings filed herein as well as the Plaintiff's testimony and evidence produced. I have also taken into consideration the submissions of Mr. Wanga, Learned Counsel for the Plaintiff.

10. It was the Plaintiff's evidence before me that she purchased the suit property from one Arthur Jeremiah Tsumah. Consequently an Indenture made on 9<sup>th</sup> November 1978 was prepared and registered in the Land Registry. A perusal of the said Indenture produced before me shows that it witnessed the fact that the Plaintiff bought the parcel of land measuring 9.53 acres for a sum of Kshs 16,800/= which sum was paid in full to the Vendor prior to the execution of the Indenture.

11. As it were, the Defendants never challenged the legality of the title registered in the Plaintiff's name as per the now repealed Land Titles Act. Indeed the Plaintiff's assertions herein were uncontroverted after the Defendants failed to attend Court to produce any evidence as to their ownership of the land.

12. Section 26 of the Land Registration Act provides that:-

***“26. (1) The Certificate of Title issued by the Registrar upon registration, or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except:***

***a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or***

***b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

13. In the matter before me there is nothing to suggest even remotely, that the Plaintiff acquired her title to the land other than in a manner that was lawful. The claim by the Defendants that they have lived on the land since 1946 was not supported by any facts or evidence.

14. In the circumstances, I am satisfied that the Plaintiff has proved her case on a balance of probabilities. In the result I make the following orders:-

***a) A permanent prohibitory injunction is hereby issued restraining the defendants either by themselves, their servants, agents and/or assigns from trespassing into, disposing off, leasing out, charging or in any other manner interfering with Plot No. 10 Malindi.***

***b) All the defendants are hereby required within 45 days from the date hereof to vacate the said Plot No. 10 Malindi failure to which eviction orders shall automatically issue to be enforced by the Court Bailiff.***

***c) The Plaintiff shall have the costs of this suit.***

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

J.O. OLOLA

JUDGE