



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 151 OF 2015

BENJAMIN CHARO KENGAPLAINTIFF

VERSUS

DAMA GEORGE KAZUNGU KITHI.....1ST DEFENDANT

MBARAKA KAZUNGU KITHI2ND DEFENDANT

SAFARI KAZUNGU KITHI3RD DEFENDANT

MATANO KAZUNGU KITHI.....4TH DEFENDANT

JUDGMENT

1. In his Complaint dated 9th September, 2015, the Plaintiff has averred that parcel of land known as Kilifi/Vipingo/375 was registered in the name of Kazungu Kithi Kombe, the 1st Defendant's husband (*deceased*); that he bought a portion of the suit land in the year 2010 from the late Kazungu and that the said land was sub-divided and Plot No. 400 was registered in his name.
2. According to the Complaint, the Plaintiff has been in possession of the land since he bought it and that on 19th June, 2015, the Defendants trespassed on the said land.
3. The Plaintiff is claiming for vacant possession and for an order of permanent injunction.
4. In their Defence, the Defendants averred that the Plaintiff acquired parcel of land number Kilifi/Vipingo/400 illegally; that they have always believed that the Plaintiff is only in possession of 3 acres and not 4 acres and that they stopped him from using more than 3 acres.
5. Although the Defendant's advocate was served with the hearing notice, neither the Defendants nor their advocate were in court when the matter came up for hearing on 3rd October, 2016. The matter proceeded in the absence of the Defendants and their advocate.
6. The Plaintiff, PW1, informed the court that he bought the first 3 acres of land from the Defendant's father for KShs. 300,000 vide an agreement dated 25th April, 2009.
7. It was the evidence of PW1 that on 7th January, 2010, he bought one acre of the land from the Defendant's father and paid him KShs. 200,000.
8. After paying for the 4 acres, Pw1 informed the court that the suit property was sub-divided and after

getting the consent of the Land Control Board, a Title Deed was issued in his name.

9. The Plaintiff produced in evidence the Transfer forms for Plot No. 400, the Mutation forms, the Title Deed and the Official search.

10. Indeed, the documents produced by the Plaintiff shows that land measuring 1.6Ha (*approximately 4 acres*) is what he purchased from the Defendant's father.

11. In the circumstances, he is entitled to use and occupy the land peacefully and without any interference from the Defendants or at all.

12. For those reasons, I allow the Plaintiff's Plaint dated 9th September, 2015 as prayed.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J.O. OLOLA

JUDGE