



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO.99 OF 2014

OMAR AWADH OMAR.....APPLICANT

***(Suing as the Legal Attorney and Agent of MOHAMED AHMED MOHAMED,
ZUBEIDA SAID ABDALLA, AHMED SAID ABDALLA and HADIJA SAID ABDALLA)***

VERSUS

CHARLES WEKESA.....1ST DEFENDANT

STEPHEN MUNYASA.....2ND DEFENDANT

LILLIAN NJEMO.....3RD DEFENDANT

JAMES CHASHA.....4TH DEFENDANT

JACOB OTIENDE.....5TH DEFENDANT

ESTHER NJERI KIRAGU.....6TH DEFENDANT

ABDALLA SHAHASI.....7TH DEFENDANT

ALFRED SAVATIA.....8TH DEFENDANT

KENNEDY MUGAZIA.....9TH DEFENDANT

WYCLIFFE OTIENDE.....10TH DEFENDANT

JACKSON MUNYASA.....11TH DEFENDANT

WALTER MUNYASA.....12TH DEFENDANT

ALEX LUYNDA.....13TH DEFENDANT

FAUSTIN MANGANGA.....14TH DEFENDANT

JAMES MANGANGA.....15TH DEFENDANT

GRACE MKWANA.....16TH DEFENDANT

DAVIDE SIMEKHA.....	17 TH DEFENDANT
BONIFISE MAULU.....	18 TH DEFENDANT
NATHAN MWASHI.....	19 TH DEFENDANT
CYRIS GITONGA.....	20 TH DEFENDANT
PETER MUNYOKI.....	21 ST DEFENDANT
JOHN KUCHAMA.....	22 ND DEFENDANT
SAMWEL CHENI.....	23 RD DEFENDANT
KATHOKA MUNYONGI.....	24 TH DEFENDANT
PHILIP WAMBUA.....	25 TH DEFENDANT
SAMWEL MWANGI.....	26 TH DEFENDANT
DANIEL MUSYOKA.....	27 TH DEFENDANT
JAMES NYANGA.....	28 TH DEFENDANT
WILSON SHIRIEVI.....	29 TH DEFENDANT
KITHUI WAHOME.....	30 TH DEFENDANT
MERCY MAINA.....	31 ST DEFENDANT
MAINA WAHOME.....	32 ND DEFENDANT
REGINA MUTHUI.....	33 RD DEFENDANT
JOSEPHAT GITAHI.....	34 TH DEFENDANT
MUMBE MUTIE.....	35 TH DEFENDANT
KARIMI SILAS.....	36 TH DEFENDANT
JULIAS MUTUA.....	37 TH DEFENDANT
MUTUKO NGOVI.....	38 TH DEFENDANT
ERICK MAKUTSA.....	39 TH DEFENDANT
PETER MAITYA.....	40 TH DEFENDANT
GITHUI WAHOME.....	41 ST DEFENDANT
MARGRET WANJIRU.....	42 ND DEFENDANT

JEMIMA MBEZNA KISOVO.....	43 RD	DEFENDANT
PHILIP MUTEMI MUSEE.....	44 TH	DEFENDANT
NATHAN SHIKHALO MWASHI.....	45 TH	DEFENDANT
DANIEL KHASHO.....	46 TH	DEFENDANT
MESSIAH KAWIRA.....	47 TH	DEFENDANT
MUTHONI KABIA.....	48 TH	DEFENDANT
MUNYITHYA NZAU.....	49 TH	DEFENDANT
JOHN KITHEKA MUSEE.....	50 TH	DEFENDANT
MARGARET WAKUTHII JOHN.....	51 ST	DEFENDANT
KUCHAMA JOHN	52 ND	DEFENDANT
WANJA MACHARIA	53 RD	DEFENDANT
JAMES NGALA	54 TH	DEFENDANT
JOHN KITHEKA MUSEE.....	55 TH	DEFENDANT
MARGARET WAKUTHII JOHN.....	56 TH	DEFENDANT
OMAR GAFO.....	57 TH	DEFENDANT
WAMEA DAMANI.....	58 TH	DEFENDANT
JOSEPH MWANI.....	59 TH	DEFENDANT
PAUL KARANJA.....	60 TH	DEFENDANT
ERICK ODUOR.....	61 ST	DEFENDANT
BENSON NGURE.....	62 ND	DEFENDANT
HADSON MWANYAMA.....	63 RD	DEFENDANT
KOLETA MUTHONI.....	64 TH	DEFENDANT
BENSON NGUYA.....	65 TH	DEFENDANT
JOSEPH WAWERU.....	66 TH	DEFENDANT
JACINTA WANJIKU MWANGI.....	67 TH	DEFENDANT
NDANU MATI	68 TH	DEFENDANT

JUDGMENT

1. In the Plaintiff dated 19th May, 2014, the Plaintiff averred that he is the registered proprietor of land known as plot number 270 Witu that the Defendants have invaded the suit land and that he is the one who is entitled to enjoy quiet possession of the land.
2. In the Plaintiff, the Plaintiff is seeking for orders of eviction as against the defendants.
3. Although the Defendants were served with the summons to enter appearance by way of advertisement in the Daily Nation Newspaper of 16th August, 2014, they neither entered appearance nor filed a defence.
4. The matter proceeded for hearing in the absence of the Defendants on 26th April, 2016.
5. The Plaintiff, PW1, informed the court that he is the son of the late Zubeida Said Abdalla who was one of the heirs of Plot Number 270 (the suit land). It was the evidence of PW1 that he was given the Power of Attorney by the other co-owners of the land to file this suit on their behalf.
6. Pw1 informed the court that the Defendants have trespassed on the suit land; that the District Officer called for a meeting and informed the Defendants to vacate the land and that although they agreed to vacate, the Defendants refused to leave and threatened to harm the surveyor.
7. The Plaintiff's mother, PW2, informed the court that her father, the late Said Abdalla Mohamed, was one of the registered proprietors of the suit land; that the family involved the services of the surveyor to demarcate the land and that the said survey work was never completed after the Defendants chased the surveyor.
8. According to PW2, the Defendants should be evicted form the suit land.
9. The Plaintiff's nephew, Said Abdalla Mohamed, PW3, stated that his late father was one of the co-owners of the suit land; that the family agreed that the plaintiff should represent them in this matter and that the Defendants have invaded the suit land and put up temporary structures.
10. According to PW3, the Defendants are not entitled to the suit land at all.
11. The Plaintiff's grandfather, Mohamed Ahmed Mohamed, PW4, informed the court that he is one of the registered proprietors of the suit land.
12. It was the evidence of PW4 that the other proprietors of the suit land are Mohamed Sheik Mohamed and Said Abdalla Mohamed who are deceased.
13. According to PW4, when they instructed the surveyor to establish the boundaries of the suit land, the Defendants invaded the land and chased away the surveyor.
14. PW4 stated that the Defendants invaded his land and that they should be evicted.
15. PW1 produced in evidence the certificate of ownership which shows that Plot Number 270 measuring 1,020 acres was registered in favour of Mohamed Shiekh Mohamed, Said Abdalla Mohamed and Mohamed Ahmed Mohamed on 28th October, 1986.
16. Other than Mohamed Ahmed, the other two proprietors have died.
17. The Plaintiff produced in evidence the order that was made by the Kadhi in Succession Cause No. 15 of 2012. The said order shows the legal heirs of the late Said Abdalla Mohamed. The order also shows how the Estate of the late said Abdalla in the suit land was supposed to be distributed amongst his heirs.

18. The Defendants have not rebutted the evidence that is on record.

19. In the absence of any evidence to the contrary, the court is satisfied that it is the Plaintiffs who are entitled to the suit land to the exclusion of the Defendants.

20. For those reasons, I allow the Plaintiff's Plaint dated 19th May, 2014 in the following terms:

a. An order of eviction be and is hereby issued evicting the Defendants, their agents, servants or any person claiming the suit land under them from Plot Number 270 Witu (Funga/Zombo) situate within Lamu county and demolition of all structures on the suit land within 90 days from the date of this judgment.

b. A permanent injunction be and is hereby issued restraining the Defendants by themselves, their children, servants and or agents from trespassing on, farming and/or in any other manner dealing with plot number 270 Witu (Funga/Zombo).

c. The Officer Commanding Police station under which Witu in Lamu county falls to enforce these orders.

d. The Defendants to pay the costs of the suit.

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