



REPUBLIC OF KENYA



KENYA LAW
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Kasumuni & 3 others v Mwakingo & 5 others (Environment & Land Case 267 of 2016) [2017] KEELC 3869 (KLR) (27 September 2017) (Judgment)

Jacob Kasumuni & 3 others v Jacob Mwangombe Mwakingo & 5 others [2017] eKLR

Neutral citation: [2017] KEELC 3869 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT & LAND CASE 267 OF 2016

LC KOMINGOI, J

SEPTEMBER 27, 2017

BETWEEN

JACOB KASUMUNI 1ST PLAINTIFF
JULIUS SIKOKI 2ND PLAINTIFF
KILAE MWAE 3RD PLAINTIFF
PAUL MWAMELA 4TH PLAINTIFF

AND

JACOB MWANGOMBE MWAKINGO 1ST DEFENDANT
JOHN TEMBO KURJA 2ND DEFENDANT
JANE WALE MATANO 3RD DEFENDANT
FLORENCE MIGHULO MWASIGWA 4TH DEFENDANT
CHARLES NYAMBU MWASIGWA 5TH DEFENDANT
CHINA ROAD AND BRIDGE CORPORATION (K) 6TH DEFENDANT

JUDGMENT

1. This suit was previously filed in Voi court as Voi SPMCC No 121 of 2015. It was transferred to this court.
2. The plaintiffs have filed this suit against the defendants jointly and severally seeking;
 - a) That an order for declaration do issue that the plaintiffs are the rightful owners of the un-surveyed parcel at Namelok-Miasenyi measuring approximately 2 acres for each plaintiff.



- b) A permanent order of injunction do issue against the defendants their employees, servants, agents and others acting under the defendants from entering, trespassing, ploughing and/or in any way from dealing with the plaintiffs un-surveyed parcel of land at Namelok-Miasenyi unless and until the plaintiffs are compensated and/or paid for the land taken and/or leased to the 6th defendant.
 - c) That an order do issue for the revocation of the lease agreement dated 24th July 2014 and/or substitution of the names of the 1st, 2nd, 3rd, 4th and 5th defendants with that of the names of the plaintiffs herein being the rightful owners.
 - d) That a new lease agreement be entered between the plaintiffs herein and the 6th defendant.
 - e) Costs of this suit.
 - f) Any other relief this Honourable Court may deem fit and just to grant.
3. The hearing date was fixed on 13/6/2017. On 13/6/2017 neither the defendants nor their advocates were in court. The court upon being satisfied that they had been served directed that the matter proceeds exparte.
 4. Pw1 Jacob Kasumuni told the court that the defendants were his neighbours. That he and his co-plaintiffs live in an eight acre parcel of land.

Further that the case commenced in Voi court Vide Voi SPMCC NO 121 of 2015. The proceedings were produced as exhibit p1. He got a lease agreement executed in favour of the 6th defendant showing that the 1st – 5th defendants were the lessors. The lease agreement was produced as exhibit P2. They instructed an Advocate to write a demand letter to the defendant. It was produced as exhibit P3 the response to the letter was produced as exhibit P4. The plaintiff's advocate wrote another letter dated 7/8/2014. It was produced as exhibit P5. He further told the court that they were paid Kshs.180,000/= in another file by the 6th defendant. The letter confirming payment was produced as exhibit P6. He also told the court that the 6th defendant is going on with activities on their land. He prays that they be declared the owners of the land.

He said he was not aware of the existence of Maendeleo Self Help Group.

5. PW2 Paul Mwamela Kasumuni confirmed what PW1 told the court that they have been residing on the land since 1997. He produced his copy of the National Identity card as exhibit P7 and another letter from the defendants Advocate as exhibit P8. He also denied knowledge of the existence of Maendeleo Self Help Group.
6. The issue of determination is whether they have made out a case on a balance of probabilities as against the defendants.
7. The defendants were not present court when the plaintiffs closed their case. The defence case was therefore closed.

In their statement of defence dated 9th September 2015 the defendants state that the land is community land that they formed Maendeleo Self Help Group to facilitate all projects concerning the community.

Further that the 1st to the 5th defendants are officials of Maendeleo Self Help Group. They also admitted that they signed the lease agreement with the 6th defendant for lease of land on behalf of the community.

8. I have considered the plaintiff's case in totality I have also considered the exhibits produced. The plaintiffs have denied the existence of Maendeleo Self Help Group.



The defendants in their statement of defence admitted that they signed the lease agreements as officials of Maendeleo Self Help Group. A look at the lease agreement shows that the defendants signed in their individual capacities. There is nothing to show that they did so on behalf of Maendeleo Self Help Group.

9. All in all, I find that the plaintiffs' case has not been controverted. I find that they have made out a good case against the defendants.
10. I hereby enter judgment in their favour as against the 1st – 5th defendants jointly and severally as follows;
 - a) That a declaration do and is hereby issued that the plaintiffs are the rightful owners of un-surveyed parcel at Namelok-Miasenyi measuring approximately 2 acres for each plaintiff thereby making 8 acres in total.
 - b) That a permanent injunction do and is hereby issued against the defendants, their employees, servants, agents and others acting under the defendants from entering, trespassing, ploughing and/or in any way from dealing with the plaintiffs un-surveyed parcel of land at Namelok-Miasenyi unless and until the plaintiffs are compensated and/or paid for the land taken and/or leased to the 6th defendant.
 - c) That an order do and is hereby issued revoking the lease agreement dated 24th July 2014 and/or substitution of the names of the 1st, 2nd, 3rd, 4th and 5th defendants with that of the names of the plaintiffs herein being the rightful owners.
 - d) That a new lease agreement be entered between the plaintiffs herein and the 6th defendant.
 - e) The plaintiffs shall have costs of the suit.

It is so ordered.

L. KOMINGOI

JUDGE

27/9/2017

