



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.18 OF 2014

GEORGE CHENGO.....PLAINTIFF

=VERSUS=

KAHINDI KATIMBO.....DEFENDANT

J U D G M E N T

Introduction:

1. In his Plaint dated 10th February 2014, and filed on 11th February 2014, the Plaintiff averred that he is the beneficial owner of an unregistered parcel of land measuring approximately two and half (2 ½) acres located in Kasimbiji area within Ganda Location, Kilifi County (the suit property).
2. The Plaintiff has averred in the Plaint that he has been on the suit property since 1984 and has lived on the said property with his siblings since then without interference from anybody.
3. However, on diverse dates in the month of February 2011, the Plaintiff averred, that the Defendant encroached on the suit property, fenced it off and started ploughing it.
4. The Plaintiff is praying for a permanent injunction to issue and for a declaration that he is the legal and beneficial owner of the suit property.
5. The Defendant entered appearance through the firm of Antony Okuto and Company Advocates on 29th May 2014 and filed a Defence and Counterclaim on 1st September 2014.
6. In his Defence, the Defendant averred that his refusal to vacate the suit property is based on a reasonable justification of possession and use by both his parents and other family members.
7. In the Counterclaim, the Defendant averred that he is the one entitled to the suit property having lived on the land for over 40 years.

The Plaintiff's case:

8. The Plaintiff, PW1, relied on the statement that was filed in this court on 11th February 2014.
9. It was the evidence of PW1 that he lived on the suit property with his parents until 1974 when they passed on.
10. PW1 informed the court that he buried his parents on the suit property and that he has been in peaceful occupation of the land without interference.
11. It was the evidence of PW1 that sometimes in February 2011, the Defendant encroached on the suit property, fenced it off and started cultivating it; that he reported the matter to the area Chief and a meeting was held and that the Assistant Chief recommended that an Agricultural Officer assesses the trees planted for purposes of compensating the Defendant.
12. The son of PW1, PW2, testified and reiterated the evidence of his father.

13. The Plaintiff's neighbour, PW3, informed the court that the Plaintiff has lived on the suit property with his family for a period of over 60 years.
14. It was the evidence of PW1 that when the Defendant invaded the suit property in February 2011, he was one of the persons who attended a meeting that was convened by the Chief and the Assistant Chief on 18th November 2012 to deliberate on the dispute.
15. The evidence of PW3 was that in the meeting, the Defendant was told to vacate the land which he has refused to do.
16. Although the Defendant's advocate was served with a hearing notice, neither the Defendant nor his advocate was in court on 13th May 2015 when the matter came up for hearing.

Submissions:

17. The Plaintiff's advocate filed brief written submissions in which he reiterated the Plaintiff's evidence. I have considered the said submissions.

Analysis and findings:

18. The Plaintiff, PW2 and PW3, informed the court that it is the Plaintiff and his family who have lived on the suit property which is unregistered for over 60 years.
19. According to the evidence of PW1, when his parents died in 1974, he buried them on the suit property.
20. The evidence of PW1 and PW3 was that the Defendant invaded the suit property in February 2011 and the Assistant Chief directed that he should be compensated for the trees that are on the suit property.
21. According to the evidence of PW1, PW2 and PW3, the Defendant has declined to vacate the suit property.
22. The Defendant did not call evidence to rebut the Plaintiff's evidence.
23. Having considered the evidence of PW1, PW2 and PW3, I am satisfied that it is the Plaintiff who is entitled to the suit property having lived thereon for more than 60 years.
24. For those reasons, I allow the Plaintiff's Plaint dated 10th February, 2014 as prayed and dismiss the Defendant's Counterclaim with costs.

Dated and delivered in Malindi this 26th day of February, 2016.

O. A. Angote

Judge