



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL APPEAL NO. 45 OF 2012**

*(An appeal from the Judgment and Decree of Hon. Y.A. Shikanda -SRM in Malindi RMCC No. 348 of 2008)*

**REUBEN MWANGI KABUTHA**

**IRUNGU MWANGI KABUTHA.....APPELLANTS**

**=VERSUS=**

**JAMES. G. MOUKO.....RESPONDENTS**

**J U D G M E N T**

**Introduction:**

1. This is an appeal from the Judgment of the Senior Resident Magistrate in Malindi RMCC NO. 348 of 2008.
2. The Appeal is premised on the grounds that the learned Magistrate erred by holding that the Defendants were not possessed of vested interest in the suit property; that the Magistrate erred by failing to appreciate that Maisha Mapya Self Help was an establishment concerned with allocating land to squatters and that the Magistrate erred in holding that one Joseph Siele was an allottee of the suit property.
3. The Appeal is further grounded on the fact that the Magistrate erred in concluding that Pastor Kakele transferred good title to the Plaintiff and that the Magistrate erred in failing to hold that the Defendants were entitled to possession and ownership of the suit land.

**Submissions:**

4. I have considered the submissions that were filed by the parties:

**Analysis and findings:**

5. This being a first Appeal, this court is supposed to evaluate the evidence that was produced in the lower court, while reminding itself that it did not have the opportunity of seeing and hearing witnesses.
6. In the Plaint filed in the lower court, the Plaintiff, who is the Respondent herein, averred that he is the registered owner of parcel of land number 10719/207, Malindi having bought it from JCC church through pastor Thomas Kakale.
7. The Respondent averred in the Plaint that in September 2008, the 1<sup>st</sup> Appellant put up a mud

- walled and makuti roofed structure and rented part of it to the 3<sup>rd</sup> Defendant.
8. The Respondent sought in the Plaint for a declaration that he is the legal owner of the suit property.
  9. In their Defence, the Appellants averred that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants have been squatters on the land in question since 1967; that they are the ones who formed Maisha Mapya Self Help Group and that their father paid Kshs.25,000 per plot and was allocated eight (8) plots, including the suit property.
  10. The Appellants sought for a declaration that the suit property belongs to them.
  11. In his Judgment, the learned Magistrate found in favour of the Respondent and dismissed the Appellant's counter-claim. The Magistrate also awarded the Respondent general damages of Kshs.50,000 for breach of the Plaintiff's legal rights.
  12. So what was the evidence before the lower court?
  13. In his evidence, the Respondent, PW1, informed the court that the Appellants had trespassed on his land which he purchased from Pastor Kakale on behalf of Jesus Celebration Center, Malindi.
  14. According to the Respondent, Pastor Kakale informed him that the land had been given to the church by PC Siele, a police officer.
  15. PW1 produced the Indenture that the Church had signed with Maisha Mapya Self Help Group and Redeemed Gospel Church.
  16. It was the evidence of the Respondent that because the Indenture had not been registered, he was referred to Maisha Mapya Self Help Group who transferred the land to him.
  17. According to the Respondent, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants started claiming that the land belonged to their father and sister respectively.
  18. The Respondent produced a list of proprietors of the various portions in Maisha Mapya showing that the 1<sup>st</sup> and 2<sup>nd</sup> Appellant's father, Mwangi Kabutha, was allocated seven (7) plots whose numbers were 1734/00451-457 while Mr. Siele was allocated plot number 450.
  19. One of the squatters at Maisha Mapya, PW2, informed the trial court that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants' father, Mwangi Kabutha, was a squatter at Maisha Mapya.
  20. According to Pw1, who was the Secretary of Maisha Mapya Self Help Group, Mwangi Kabutha, deceased, was allocated plot number 451 to 457.
  21. It was the evidence of PW2 that plot number 450 was purchased by Joseph Siela and his name was entered into the register of the Group.
  22. PW2 informed the court that Mr. Siele informed them that he donated his plot to the church, which the church later on sold to the Respondent.
  23. In cross examination, PW2 informed the trial court that the Group's Constitution allowed them to sell to outsiders empty plots because the squatters could not raise the entire purchase price.
  24. The 1<sup>st</sup> Appellant, DW1, informed the court that the plot that the Respondent had purported to buy was his house; that they have eight (8) plots which are in the name of their late father.
  25. The 2<sup>nd</sup> Appellant, DW2 reiterated the evidence of his brother.
  26. According to DW1, Maisha Mapya Self Help Group told them to pay up Kshs.120,000 for the eight plots that had been allocated to their father.
  27. It was the evidence of DW1 that they had already paid Kshs.145,000 for the plots. However, they never managed to pay the Kshs.120,000 that had been requested for by Maisha Mapya Self Help Group.
  28. In cross examination, DW2 stated that they had no documents showing that the eight (8) plots belonged to their father.
  29. The surveyor's report was produced in court by the consent of the parties.
  30. In his Judgment, the learned Magistrate held, and rightly so, that the only evidence that the Appellants produced to show that the disputed land belonged to their late father were payment receipts that were issued by Maisha Mapya Self Help Group in respect of an undisclosed plots.
  31. The learned Magistrate further correctly held that in any event, the Appellants' father never paid up for the plots that were allocated to him by Maisha Mapya Self Help Group.
  32. Indeed, the Secretary of the Group produced a copy of the register which showed that plot Number 450, which later became to be known as 10719/207, was allocated to Joseph K. Siele, and not the Appellants' father. The Appellants' father, according to the register, was allocated plot numbers 451-457.

33. In view of the fact that plot number 450 was surveyed and a Deed Plan was issued leading to the registration of an Indenture in the name of the Respondent, I find and hold that the learned magistrate did not err when he found that the Appellants had not established any legal interest in the suit property.
34. The learned Magistrate further correctly held that the Appellants' did not prove the allegations that the Respondent had procured the Indenture in respect to the suit property fraudulently.
35. The trial court correctly analysed the evidence before it and found in favour of the Respondent. I do not find any valid ground or evidence to entitle me to set aside the Judgment of the lower court.
36. For those reasons, I dismiss the Appellants' Appeal with costs to the Respondent.

Dated and delivered in Malindi this **11<sup>th</sup>** day of **March**, 2016.

**O. A. Angote**

**Judge**