



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. 129 OF 2012

1. MARK MWAURA MWANGI

2. JOHN WAWERU MWANGI (suing as administrator of the estate of

PETER JOHN MWANGI).....**PLAINTIFFS**

=VERSUS=

MICHAEL CHARO KONDE & 28 OTHERS.....DEFENDANTS

J U D G M E N T

1. In the amended Complaint dated 23rd June, 2014, the Plaintiff is seeking for an order to evict the Defendants out of plot number 157/III/MN (the suit property).
2. The Plaintiffs have averred that at all material times, Peter John Mwangi, the deceased, was the registered owner of the suit property and that although the Defendants moved out of the suit property, they later returned on the land and have unlawfully remained on the suit land.
3. Although the Defendants were served by way of an advertisement in the Daily Nation newspaper of 23rd September, 2014, they neither entered appearance nor filed a Defence.
4. The matter proceeded for formal proof on 23rd February, 2015.
5. The 1st Plaintiff, PW1, informed the court that he is the son of the late Peter John Mwangi, the registered proprietor of plot number 156/III/MN; that his late father bought the suit property from Mohamed Haji Bachu vide a Transfer dated 19th April, 1974 and that the land was transferred to his father on 24th April, 1974.
6. According to PW1, it was his late father who planted and utilised the coconut and cashewnuts on the land.
7. PW1 stated that when his father died, the Defendants invaded the suit property and put up temporary makuti structures.
8. According to PW1, when some of the Defendants were shown the title documents, they used those documents and filed a suit for adverse possession, which claim has since been dismissed.
9. PW2 stated that she is the daughter of the late John Mwangi alias Peter Gichengi; that she is a beneficiary of the suit property and that after she was allocated the land, she fenced it.
10. According to PW2, when they reported about the invasion of their land by the Defendants, they discovered that it is Mr. Mwahimu Ali Salim who had illegally given out the land to the Defendants.
11. It was the evidence of PW2 that with the help of the Chief, all the Defendants left the land but they went back after a short-while.
12. The Plaintiff's counsel submitted that the Plaintiffs have indefeasible title to the suit land; that in

an attempt to obtain the suit land by virtue of adverse possession, the Defendants filed Malindi ELC Number 36 of 2010 (OS) which was dismissed and that Article 40 of the Constitution guarantees property rights to every person.

13. The Plaintiffs produced in evidence the Certificate of Title and the Certificate of Postal Search which shows that the suit property is in the name of the late Peter John Mwangi.
14. This court is aware that some of the Defendants in this matter filed Malindi ELC Civil Case NO. 36 of 2010 (OS) claiming for the suit property on the basis that they have lived on the land for more than 12 years. That suit was dismissed by this court after hearing both sides.
15. In the absence of a Defence in this matter, and considering that the Plaintiffs have shown by way of documentary evidence and their testimonies that the suit property belongs to their late father, I am satisfied that the Plaintiffs have proved their case on a balance of probabilities.
16. For those reasons, I allow the Plaintiffs' amended Plaint dated 23rd June, 2014 as prayed.

Dated, signed and delivered in Malindi this 27th day of May, 2016.

O. A. Angote

Judge