



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 237 OF 2013

KATANA KAHINDI MASHA.....PLAINTIFF

=VERSUS=

1. KARISA WANJE MASHA

2. SAIDI WANJE MASHA

3. WANJE MASHA.....DEFENDANTS

J U D G M E N T

Introduction:

1. In the Plaintiff dated 18th December, 2013, the Plaintiff has stated that he was at all material times the one entitled to the unregistered parcel of land situated at Lango Baya within Kilifi County measuring five (5) acres (the suit property); that the suit property borders the 3rd Defendant's land on the west and that he inherited the suit property from his late father in 1982.
2. According to the Plaintiff, the 3rd Defendant is a half brother of the Plaintiff's father and that the 3rd Defendant is now claiming that he is entitled to approximately two acres of the suit property on the basis that he inherited it from his ancestors.
3. The Plaintiff has averred that the elders resolved that part of the suit property belonged to the 3rd Defendant and that on that account, the Defendant has trespassed on the suit property.
4. In their Defence, it was averred that it is the 3rd Defendant who gave the Plaintiff the suit property; that the suit property is part of a ranch known as Weru Group Ranch which holds a title to parcel of land number Kilifi/Weru/20 and that the Plaintiff is not a member of the Ranch and cannot therefore claim any right in the suit property.

The Plaintiff's case:

5. The Plaintiff, PW1, informed the court that the 3rd Defendant is his uncle while the 1st and 2nd Defendants are his sons.
6. The Plaintiff adopted his statement in which he stated that he acquired the suit property situated in Lango Baya in the year 1982, having inherited it from his father.
7. According to the Plaintiff, the Defendants acquired land neighbouring the suit property measuring 1 ½ acres.

8. PW1 informed the court that the Defendants started claiming for 2 acres of the suit property on the ground that it belonged to their ancestor, one Vimba Ziro and that when the dispute was taken to the village elders, they decided that the 2 acres belonged to the Defendants.
9. The Plaintiff produced in evidence the report by the Chief and photographs showing his house.
10. According to PW1, he did not agree with the decision of the village elders. It was his evidence that the whole land belonged to Vimba Ziro who was his great grandfather and that the whole clan consists of more than 20 people.
11. In cross examination, PW1 stated that his father was convicted for killing his mother whereafter he went to live in Watamu.
12. PW1 stated that when his father was released from jail, he went back to Lango Baya.
13. It was the evidence of PW1 that the suit property belongs to the clan and not to the Ranch.
14. PW1 stated that when he moved on the suit property in 1982, the land was unoccupied and that the Defendants were occupying a different piece of land before they invaded the land belonging to Safari Kenga.
15. It was the evidence of PW1 that he was born at Lango Baya on a different piece of land.
16. The Plaintiff's elder brother, PW2, informed the court that he stays in Lango Baya and that the suit property belongs to the Plaintiff.
17. According to PW2, the suit property belonged to their great grandfather, Vimba.
18. PW2 informed the court that the Defendants took his portion of land which neighbours the Plaintiff's land and that he (PW2) was given another land in exchange. However, it was not until the year 2012 that the Defendants started claiming for 2 acres of the Plaintiff's land.
19. In cross-examination, PW2 stated that although he is not a member of the Ranch, his grandfather was a member.
20. PW3 informed the court that he is a cousin to the 1st Defendant and that he is a resident of Lango Baya.
21. It was the evidence of PW3 that him, together with the Plaintiff, acquired land in Lango Baya in 1982; that the Plaintiff inherited his father's land and that the Defendants only started claiming the Plaintiff's land in the year 2012.
22. In cross-examination, PW3 stated that when the Plaintiff moved on the suit property in 1982, his father was in jail. By that time, according to PW3, the 3rd Defendant was staying on a different piece of land when the Plaintiff moved on the suit property in the year 1982.

The Defendants' case:

23. The 1st Defendant, DW1, informed the court that the Plaintiff is his nephew; that he is the one who invited the Plaintiff on the suit property which is his and that he is a member of Weru Ranch.
24. According to DW1, neither the Plaintiff's father nor grandfather were members of Weru Ranch.
25. DW1 stated that he was born in Lango Baya and that his father's name was Masha wa Vimba Dziro while his grandfather was known as Vimba Dziro.
26. In cross-examination, DW1 stated that there are other members of Vimba Dziro who stay in Lango Baya.
27. DW1 stated that he had a dispute with the Plaintiff's brother, PW2, over land which were resolved when they exchanged their parcels of land.
28. DW1 stated that there exists a sisal boundary wall between the land the Plaintiff occupies and his land and that it is the Plaintiff who planted the boundary.
29. DW1 informed the court that the Plaintiff has buried his father, son and grandson on the suit property and that Weru Ranch was started by the people who were living in the area.
30. Although he paid Kshs.5,000 to become a member of Weru Ranch, DW1 informed the court that he was not told the acreage of the land that he was entitled to.
31. The official of Weru Ranch, DW2, informed the court that the 3rd Defendant is a member of the Ranch. The evidence of DW2 was that the Plaintiff and his father and grandfather are not members of the Ranch and that the people who are not members of the Ranch cannot claim for any land from the Ranch.
32. In cross-examination, DW2 stated that he found the Ranch had already been established and that he joined the Ranch in 1985 as an official.
33. Before the Ranch was incorporated in the year 2009, it was the evidence of DW2 that the land was

- owned by the indigenous people.
34. The Plaintiff and the Defendants' advocate filed brief written submissions in which they rehashed their witnesses' testimony. I have considered those submissions and the evidence before me.

Analysis and findings:

35. The Plaintiff's claim in this matter is that he has been occupying land measuring 5 acres (the suit property) since 1982.
36. According to the Plaintiff, he inherited the suit property from his late father.
37. The Defendants on the other hand are claiming for two acres out of the land that the Plaintiff is claiming to be his.
38. According to the Plaintiff's uncle, DW1, he is the one who invited the Plaintiff and his father on the suit property, and that after inviting the Plaintiff on the land, the Plaintiff has moved his boundaries and trespassed on his land.
39. The 1st Defendant informed the court that indeed his grand father Vimba Ziro was the first person to settle on the expansive land in Lango Baya.
40. It would appear that upon his demise, Vimba Ziros descendants occupied the expansive parcel of land without regard to the acreage that each family member was to occupy.
41. Initially, the Plaintiff's brother, PW2 was living on a piece of land that was abutting the Plaintiff's land.
42. However, PW2 swapped his land with the 1st Defendant. None of the witnesses informed the court the acreage of the land that the Plaintiff's brother was occupying before he moved out.
43. The failure by PW2 to disclose to the court the area that he was initially occupying before he moved out, and the reasons as to why he swapped his land with the 1st Defendant is a mystery that this court cannot unravel.
44. Although the Plaintiff insists that his land measures 5 acres, and that the boundaries to his land are clearly demarcated by a sisal boundary, the Plaintiff did not produce a report or a sketch by a surveyor, or by a village elder to ascertain that indeed his land has always had a clear demarcation which the Defendants have interfered with. The claim by the Plaintiff that he owns 5 acres is therefore unsubstantiated.
45. The Plaintiff admitted that the village elders attempted to solve the dispute between himself and the Defendants.
46. The Plaintiff produced in evidence the report that was authored by the Chief after the deliberations of the village elders. In the said letter, the Chief stated as follows:-

“After thorough scrutiny and cross examination by the witnesses, it was resolved that the land in question belongs to KARISA WANJE MASHA.....”

47. The Plaintiff did not inform this court why in his view, the council of elders were wrong in their decision.
48. Considering that the council of elders are people who know the suit property well, this court is inclined to believe that the said elders took in consideration all the relevant information before reaching their decision.
49. In the absence of evidence by the Plaintiff to show that indeed his land has always been 5 acres, and considering that the dispute as to the extent of the Plaintiff's land viz-a-viz that of the Defendants was deliberated upon by the council of elders, I find and hold that the Plaintiff has not proved his case on a balance of probabilities.
50. The Plaintiff should abide by the decision of the council of elders for tranquility to prevail in the area.
51. For those reasons, I dismiss the Plaintiff's Plaint dated 18th December, 2013 with no order as to costs.

Dated, signed and delivered in Malindi this 6th day of May, 2016.

O. A. Angote

Judge