



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.219 OF 2015

1. CHARO LEWA
2. KAHINDI CHARO
3. NICHOLAS LEWA
4. KADII CHARO LEWA.....PLAINTIFFS

=VERSUS=

1. ESTATE OF MOHAMED OMAR BAWALY
2. JOGI MOTORS LTD
3. NATIONAL LAND COMMISSION
4. HON. ATTORNEY GENERAL.....DEFENDANTS

R U L I N G

1. In his Application dated 24th November, 2015, the Plaintiff is seeking for the following orders:-

(a) THAT the 1st and 2nd Defendants by themselves, their agents, servants, workers and/or employees be permanently restrained from entering, remaining, destroying, removing and/or uprooting the Plaintiffs food crops, cutting down the Plaintiffs mango trees, coconut trees, cashewnut trees and/or dealing in any manner likely to interfere with the Plaintiffs' peaceful stay and or occupation on plot No. 139 Kaoyeni Malindi or any part thereof, pending the hearing and determination of this suit.

(b) THAT the costs of this application be in the cause.

2. In his Affidavit, the 1st Applicant has deponed that he was born and brought up in a village known as Kaoyeni Malindi in 1945 on a piece of land owned and occupied by the Yokali family.

3. According to the 1st Applicant, his Grand father, Grandmother, father and mother lived and were buried on the suit property; that it was not until in the year 1970's that he came to learn that the portion on

which he occupied formed part of plot number 139 Malindi and that it was not until the year 2009 when Mohamed Omar Bawaly started demolishing their houses and evicting people without a court order.

4. It is the Applicant's case that they are entitled to the land by adverse possession; that they have developed the land and that they have known the land as their ancestral land and do not have any other place to go.

5. In response, Ishamel Lewa Mandeja deponed that he is a member of the family of the late Yokali who was a squatter on plot number 139 which belonged to Mohamed Bawaly; that the family of his late father do not have a claim over plot 139 having been evicted back in 1979 and that none of the Plaintiff's reside on the suit property.

6. Mr. Ishmael further deponed that he was authorised to collect a cheque of Kshs.750,000 which was divided amongst the family members who include the Applicants'; that the 1st Applicant received Kshs.105,000 and the 2nd and 4th Applicants are the sons and daughters of the 1st Applicant.

7. The 2nd Defendant's director deponed that the 2nd Defendant does not have an interest in plot number 139 Malindi and that the suit should be dismissed.

8. One of the administrators of the 1st Defendant deponed that the Plaintiffs do not reside on the suit property; that the 1st Applicant's father vacated the suit property in the 70's after he was compensated for the cashew-nut trees and that the land was free and unoccupied for long until in the year 2011 when some of the Plaintiffs started going back to the land.

9. It is the 1st Respondent's case that because of the perennial land problems in the area, they decided to negotiate with some of the family members to allow them sell the land. That is when they agreed to pay the claimant's families Kshs.750,000 each.

10. It is the 1st Respondent's case that the Plaintiffs do not reside on plot number 139 but that their family members had cultivated maize on a portion of the land and agreed to remove their maize by September,2015.

11. According to the 1st Respondent's representative, the 1st Defendant has since transferred the suit property to a third party.

12. In his submissions, the Plaintiffs' advocate submitted that the 1st Defendant has admitted that the Plaintiffs occupied a portion of the suit property; that it is not clear how the 1st Defendant became registered as beneficiaries of the Estate of the deceased in respect of portion number 139 Malindi and that there is no evidence that the Plaintiffs' father was ever compensated in 1970.

13. The Defendants did not file their submissions.

14. I have considered the Affidavits and the submissions that are on record.

15. In their suit, the Plaintiffs are seeking for a declaration that they are entitled to a portion of land measuring 5 acres of plot no.139 Malindi by adverse possession.

16. It is the Plaintiffs' case that their grandparents and parents lived on the suit property and they (the Plaintiffs) were born and raised on the suit property.

17. On the other hand, the 1st Defendant's case is that the Plaintiffs' parents vacated the suit property in the 1970's after being compensated for the cashew nut trees.

18. According to the 1st Defendant's deposition, it was not until the year 2011 that the Plaintiffs and their

family members entered the land and sub-divided it amongst themselves.

19. According to the 1st Defendant, they agreed with the Plaintiffs that each of the family shall be paid Kshs.750,000 once the suit property is sold. Indeed, it would appear that the 2nd Defendant issued two cheques of Kshs.750,000 each to some of the Plaintiffs.

20. An agreement dated 23rd June, 2015 was signed by the Plaintiff and the 1st Defendants' legal representative in which it was agreed that the “squatters have agreed with the owners to stop use of the owners land known as plot number 139....”.

21. The agreement of 23rd June, 2015 coupled with the payment of Kshs.750,000 to each of the Plaintiffs' family members confirms that indeed the Plaintiffs have been utilising the suit property.

22. The issue of when the Plaintiffs started using the land and how they entered the land can only be dealt with conclusively at the hearing.

23. In the circumstances, the status quo prevailing now should be maintained. The Prevailing status quo is that the Plaintiffs are the ones who are utilising the suit property.

24. In the circumstances, I allow the Application dated 24th November, 2015 as prayed.

Dated, signed and delivered in Malindi this **22nd** day of **July**, 2016.

O. A. Angote

Judge