



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.33 OF 2015

KAHINDI GAMBO CHINANDA.....PLAINTIFF

=VERSUS=

1. KATANA KALUME MWARINGA

2. KAHINDI KATANA KALUME.....DEFENDANTS

J U D G M E N T

1. In his Complaint dated 2nd March, 2015, the Plaintiff averred that he bought a parcel of land measuring 40 meters by 72 meters being a portion of land known as plot No. 439 Takaungu from the Defendant.
2. According to the Plaintiff, he entered into a further agreement with the 1st Defendant in which the 1st Defendant sold to him an additional portion of land measuring 13 meters by 72 meters; that he took possession of the suit property and planted several sisal plants around the suit property to act as a hedge and that he also excavated 250 building blocks from the suit property.
3. The Plaintiff further averred that in the year 2002, he buried his aunt on the suit property and that he later on commenced developing the suit property.
4. It is the Plaintiff's case that in the year 2004, the Defendants started encroaching onto the his land; that he sought the assistance of the area Assistant Chief and that the Defendants have now commenced construction of a house on his land.
5. The Plaintiff is praying for an order of vacant possession and a permanent injunction against the Defendants.
6. Although the Defendants were served with Summons to Enter Appearance and a Complaint, they neither entered appearance nor filed a Defence.
7. The matter proceeded as undefended on 21st April, 2016. The Plaintiff, PW1, reiterated the contents of the Complaint. PW1 also produced in evidence the sale agreements that he entered into with the 1st Defendant on 28th May, 2009 and 15th March, 2010.
8. The sale Agreements that the Plaintiff produced were signed by the vendor and the purchaser and their signatures were duly attested. The said agreements comply with the provisions of Section 3(3) of the Law of Contract Act.
9. PW2 informed the court that he witnessed the Plaintiff pay to the 1st Defendant the purchase price and that he was one of the people who witnessed the signing of the agreements.
10. The Plaintiff's advocate filed brief submissions which I have considered.
11. The Defendants did not file a Defence. The Defendants did not also adduce evidence to controvert the Plaintiff's evidence. It therefore follows that the averments made by the Plaintiff against the Defendants, coupled with the evidence of PW1 and PW2 are wholly uncontroverted.

12.The evidence before me shows that the Plaintiff purchased the suit property from the 1st Defendant. The Plaintiff is therefore entitled to enjoy the suit property peacefully.

13.In the circumstances, I find that the Plaintiff has proved his case on a balance of probabilities.

14.I therefore allow the Plaint dated 2nd March, 2015 as follows:-

(a) The Defendants to give vacant possession of the suit property.

(b) A permanent injunction be and is hereby issued restraining the Defendants, their servants and or agents from interfering or trespassing on the suit property.

(c) The Defendants to pay to the Plaintiff the costs of the suit.

Dated, signed and delivered in Malindi this 15th day of July, 2016.

O. A. Angote

Judge