



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 2 OF 2015

KENNETH KAZUNGU (*suing on his own behalf*
and

on behalf of the Estate of Angerson Kambi Thoya.....**PLAINTIFF**

=VERUS=

1. KOMBO MATANO

2. LAND REGISTRAR KILIFI.....**DEFENDANTS**

J U D G M E N T

1. This matter proceeded for formal proof on 26th April, 2016.
2. According to the Plaint and the Plaintiff's evidence, at the time of the Plaintiff's father's death on 5th January, 2002, he was in occupation of parcel of land known as Kilifi/Ngerenyi/25 measuring 4.9Ha.
3. It was the evidence of PW1 that in the year 2006, he filed a land dispute before the Bahari Land Dispute Tribunal being Land Case No. 97 of 2006; that the Tribunal made findings which were adopted by the Senior Resident Magistrate and that the Defendant filed an appeal at the Provincial Land Appeals Committee being Appeal No.447 of 2006.
4. However, it was the evidence of PW1 that although the Appeal was never prosecuted, the 2nd Defendant fraudulently issued to the 1st Defendant with a title deed for the suit property.
5. The Plaintiff is seeking for the cancellation of the Title Deed that was issued to the 1st Defendant.
6. PW2 supported the Plaintiff's claim and informed the court that the Plaintiff's father compensated the 1st Defendant for the trees that were on the suit land in 1967; that the Plaintiff filed a dispute before the Tribunal and that the Tribunal made findings in favour of the Plaintiff.
7. PW1 produced in evidence the proceedings and the award that was made by the Bahari Dispute Tribunal in Land Case No. 97/06 which shows that the Tribunal decided the case in his favour on 17th October 2006. The award of the Tribunal was adopted by the Senior Resident Magistrate on 7th December 2006.

8. Although the Defendant filed a Memorandum of Appeal with the Provincial Land Appeals Committee in Mombasa, there is no evidence to show that the said Appeal was prosecuted.

9. Considering that the decision of the Tribunal has never been varied or set aside, I am satisfied that the Plaintiff has proved his case on a balance of probabilities.

10. I therefore allow the Plaintiff as drawn.

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

O. A. Angote

Judge