



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 42 OF 2015

1. HARE KITSAO
2. KAZUNGU KITSAO.....PLAINTIFFS

=VERSUS=

1. CHARO BAYA
2. KATANA BAYA
3. KAHINDI BAYA
4. KAHINDI KENGA.....DEFENDANTS

J U D G M E N T

1. In their Complaint, the Plaintiffs have averred that they are the rightful owners of a parcel of land situated at Bamba within Kilifi County; that the said land is their ancestral land and that the Defendants have encroached on the land.
2. According to the Plaintiffs, the issue of the encroachment was reported to the local administration officers who decided the dispute in their favour.
3. The Plaintiffs are seeking for an order of permanent injunction restraining the Defendants from trespassing on the land.
4. Although the Defendants were served with the Summons, they neither entered appearance nor filed a Defence.
5. The two Plaintiffs were in court and informed the court that the Defendants have refused to vacate their ancestral land.
6. The Plaintiffs informed the court that the land belonged to their father and that they were not related to the Defendants.
7. From the letter from the Chief and the Minutes of 27th March, 2012, the Chief of the area arbitrated over the disputed land and ruled in favour of the Plaintiffs.

8. According to the letter dated 24th February, 2015 by the Deputy County Commissioner of Ganze sub county, the dispute between the Plaintiffs and the Defendants has been outstanding since 1980s.

9. Considering that the Defendants were served but declined to file a Defence to controvert the Plaintiffs' claim, I find and hold that the Plaintiffs have proved their case on a balance of probabilities.

10. In the circumstances, I allow the Plaint dated 17th March, 2015 in terms of prayer (a) and (b).

Dated, signed and delivered in Malindi this 7th day of **October**, 2016.

O. A. Angote

Judge