



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO.207 OF 2013**

**WACHU RANCH (D.A) CO. LIMITED.....PLAINTIFF**

**=VERSUS=**

**ALEX MWALUMU BAYA & 549 OTHERS.....DEFENDANTS**

**J U D G M E N T**

1. In its Complaint dated 18<sup>th</sup> November, 2013, the Plaintiff averred that it is the registered owner of parcel of land known as L.R. NO.13600 measuring approximately 29,911 Ha within Tana River County (the suit property).
2. The Plaintiff has averred that it was allocated the suit land by the Government in the year 1976; that the suit property was meant for ranching and that the Defendants have on diverse dates encroached on the suit property.
3. According to the Plaintiff's Complaint, the Defendants are trespassers on its land and have made it impossible for the Plaintiff to carry out its various activities on the said land.
4. The Plaintiff is seeking for a permanent injunction to issue restraining the Defendants from remaining on the suit property.
5. The Defendants filed a joint Defence in which they averred that the Plaintiff is not the registered proprietor of the suit land; that the Plaintiff's registration as the proprietor of the suit property, if at all, was irregular, unprocedural and illegal and that in any event they have been in possession of the suit land long before the year 1976.

**The Plaintiff's case:**

6. The Tana River County Executive Member in charge of Lands, Agriculture, Livestock Development and Fisheries, PW1, informed the court that the Plaintiff's land, Wachu Ranch, is located in Tana River County and Kilifi County; that the Plaintiff has on numerous occasions reported to his office about the invasion of the suit property by the squatters and that the people who are currently residing on the suit property are invaders.
7. In cross-examination, PW1 stated that the previous councils tried to deal with the issue of the squatters invading the suit land without success; that the squatter problem started in 1997 when the Malindi Gamba road was tarmacked and that the activities of the Ranch were hampered in the 1990's when the squatters invaded the land.

8. The officer in charge of Livestock Production Tana Delta sub-county, PW2, informed the court that the Plaintiff was established in 1974; that the main purpose that led to the establishment of Wachu Ranch was to raise beef cattle for the local market and export to the Middle East and that the people who have invaded the Ranch should be evicted.
9. According to PW2, the squatters on the suit land have scared away potential investors who have all along wanted to partner with the Ranch Management in raising beef cattle in a sustainable manner.
10. It was the evidence of PW2 that the Plaintiff is now only utilising 60% of the land due to the invasion of the land by the squatters and that the invasion began in 1997.
11. The Chairman of Garsen Ranchers, Conservation and Management Forum, PW3, stated that his organisation was formed to provide a platform for the ranchers to address issues that are of common interests; that the Plaintiff is a Member of the Forum and that the people who are now claiming the land are not squatters but invaders.
12. It was the evidence of PW3 that the Defendants and the other “invaders” invaded the suit land in the mid 90's and that when he was a principal in a school neighbouring the Ranch between 1994-1995, there were no squatters on the land.
13. The Plaintiff's Director, PW4, informed, the court that the suit property is registered in favour of the Plaintiff; that the Defendants, amongst other people invaded the suit property in the 90's and that the Plaintiff is in possession of the title document in respect to the suit property.
14. PW4 produced in evidence the grant that was issued to the Plaintiff and registered on 8<sup>th</sup> February, 1991 together with a certificate of postal search.
15. In cross-examination, PW4 stated that the suit land was meant for ranching; that the Defendants invaded the land in 1997; that although the land was bushy, they used to rear cattle for meat and that the Defendants are occupying more than half of the land.
16. According to PW4, although the title document was issued to the Plaintiff in 1991, the land was allocated to the Plaintiff in 1976 and that he has been a member of the Plaintiff since then.
17. PW4 denied the Defendants' assertions that they (the Defendants) have been on the land for more than 60 years.

**The Defence case:**

18. DW1 informed the court that she entered the land in 1999 on invitation by the village elders. According to DW1, she was allocated 45 acres of the suit land by the said village elders.
19. It was the evidence of DW1 that the land was bushy with many wild animals and; that she cleared her portion of land and started cultivating the land. It was her evidence that she planted mangoes which she has been harvesting ever since.
20. DW1 stated that she did not know that the land was registered in favor of the Plaintiff; that she never saw cattle belonging to the Plaintiff on the land and that she lives on the land with her children and grand children.
21. DW1 informed the court that the government has put up water tanks on the suit property for their use and has as such recognised their presence on the land.
22. In cross-examination, DW1 stated that she came from Marereni and that she went to the suit property because was looking for wanted a place to live.

23. It was her evidence that the land was given to her by the Pokomo elders who informed her that the land belonged to the government.

24. According to DW1, she came to know the fact that the land is registered in the Plaintiff's name when she was sued in this matter.

25. DW2 informed the court that she was allocated the suit property by the Wazees of Tana Delta; that she was allocated 30 acres of the suit land by the said Wazees and that the land was bushy.

26. According to DW2, she is using 15 acres of the land that was allocated to her for cultivation.

27. The evidence of DW3 was that while looking for casual jobs in 1998, he was allocated a portion of the suit premises by the village elders; that he was allocated 22 acres which he cleared and that he has never seen the Plaintiff's cattle on the land.

28. DW4 informed the court that while looking for a place to settle with his family in the year 2008, he identified a portion of the suit land which was bushy.

29. According to DW4, he owns 15 acres although he only cleared 10 acres for cultivation purpose. It was the evidence of DW4 that he stays on his portion with his family.

30. The evidence of DW5 was that he was allocated 30 acres of the suit land by the village elders in the year 2000. It was the evidence of DW5 that after the said allocation, he planted maize and mangoes, amongst other crops on the land.

31. In cross-examination, DW5 stated that after being allocated 30 acres, he acquired a further 30 acres of the suit property and that he currently owns 60 acres.

32. DW6 informed the court that while looking for casual jobs, the local wazees allocated him 30 acres of the suit land in 1999; that he has been cultivating the suit land since then and that he has never seen the Plaintiff's cattle on the land.

### **Submissions:**

33. The Plaintiff's advocate submitted that the Defendants did not prove that the Plaintiff was allocated the suit property through undue influence or unprocedurally; that the Plaintiff has proved the legality of its title and that the Defendants have illegally occupied the suit land.

34. The Plaintiff's counsel submitted that the Defendants are trespassers and that they do not have any legal claim over the suit property.

35. The Plaintiff's counsel relied on several authorities which I have considered.

36. The Defendant's counsel did not file his submissions as directed by the court.

### **Analysis and findings:**

37. The Plaintiff in this matter is seeking for an eviction of the Defendants from land known as L.R. No.13600 situate in "West of Lamu Town in Tana River Measuring 28,911 Ha.

38. It was the evidence of the Plaintiff's director that although the land was allocated to the Plaintiff in 1976 for ranching purposes, it was not until the year 1991 that a grant in respect to the suit property was issued to the Plaintiff.

39. The grant that was issued to the Plaintiff shows that the land was to be used for Ranching purposes. That position was confirmed by the Tana River County Executive Member in charge of Lands,

Agriculture and Livestock Development and Fisheries (PW1), the Officer in Charge of Livestock Production, Tana Delta sub-county (PW2) and the Chairman of Garsen Ranchers, Conservation and Management Forum (PW3).

40. The evidence of DW1, DW2, DW3, DW4 and DW5 on the other hand was that while looking for a place to live, they were allocated portions of the suit property by the village elders.

41. According to the testimony of the Defendants' witnesses, they were not aware during the said allocation that the suit property was registered in favour of the Plaintiff.

42. DW1-DW5 informed the court that the village elders allocated them the land between the year 1999 and 2008 and that they have been cultivating their respective portions without any interference from the government or the Plaintiff.

43. None of the Defendants' witnesses asserted in his evidence that they have been on the suit land way before 1976 as pleaded in the Defence.

44. In the Defence, the Defendants challenged the Plaintiff's title document on the ground that the allocation of the land to the Plaintiff "was by undue influence and is fraudulent since the Plaintiff, the Commissioner of Lands and the then County Council of Tana River were all aware of the existence of the Defendants on the suit property."

45. As I have stated above, the evidence of DW1-DW5 was that they were allocated the portions of the suit property by the elders between 1999 and 2008.

46. It is therefore not true, as alleged in the Defence, that by the time the Plaintiff was issued with the grant in 1991, the Defendants were already in occupation of the suit land.

47. In any event, the burden of proving that the Plaintiff was issued with the title document for the suit property fraudulently or by undue influence was on the Defendants. In the **case of LTI Kisii Deutsche Investigations-Und Entwicklungsgesellschaft ("DEG") and others (2011) v KLR**, the Court of Appeal held as follows:

**"Whether a transaction was brought about by the exercise of undue influence is a question of fact. Here, as elsewhere, the general principle is that he who asserts a wrong has been committed must prove it. The burden of proving an allegation of undue influence rests upon the person who claims to have been wronged....."**

48. In the case of **Peter Kamau Vs Emmanuel Charo Tinga, Malindi Civil Appeal No. 29 of 2016**, the Court of Appeal stated as follows:

**"The learned Judge was clearly misled by the statement of this court sitting in Nyeri in Munyu Maina (Supra) in passage reproduced earlier, which in effect erroneously suggests that a document of title is worthless without further supporting evidence. ....So long as the vendor's name is contained in the certificate of title, Section 26 of the Land Registration Act enjoins "all courts" to take that certificate of title as prima facie evidence that he is the absolute and indefeasible owner.....In the absence of evidence in rebuttal, it was in grave error for the learned Judge to impeach the appellant's title in a manner he did."**

49. The Plaintiff has produced the title document in respect to the suit property. No evidence has been produced by the Defendants to impugn the Plaintiff's title.

50. Considering that no evidence was produced to show that the village elders had the legal mandate of allocating the Defendants the land which was already registered and in view of the provisions of Section 23 of the Registration of Titles Act (repealed) as read together with Section 26 of the Land Registration Act, I find and hold that the Plaintiff has proved its case on a balance of probabilities.

51. For those reasons, I allow the Plaintiff's Plaint dated 18<sup>th</sup> November, 2013 in the following terms:-

**(a) A permanent injunction be and is hereby issued restraining the Defendants by themselves, employees and/or agents from remaining on L.R. Number 13600 belonging to the Plaintiff.**

**(b) A permanent injunction restraining the Defendants, their agents and/or employees from interfering with L.R No.13600.**

**(c) A permanent mandatory injunction compelling the Defendants by themselves, servants, and/or agents to demolish and remove all the construction or structures on parcel of land L.R. No.13600.**

**(d) An order of eviction be and is hereby issued to remove the Defendants' employees and or agents from L.R.No.13600.**

**(e) The Defendants to pay the costs of the suit.**

**Dated, signed and delivered in Malindi this 25<sup>th</sup> day of November, 2016.**

**O. A. Angote**

**Judge**