



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

**AT MALINDI**

**ELC CIVIL CASE NO.9 OF 2015**

**OMAR ABDALLA alias AWADH OMAR RAJAD.....PLAINTIFF**

**=VERSUS=**

**1. KAZUNGU KARISA**

**2. KAHINDI KARISA**

**3. KITUNGA KARISA**

**4. JACKSON KARISA.....DEFENDANTS**

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

1. In their Complaint dated 22<sup>nd</sup> January, 2015, the Plaintiff has averred that in the year 1988, his late father bought an unregistered piece of land measuring five (5) acres from one Lawrence Kazungu Mramba and Jabu Mrambu.

2. It is the Plaintiff's contention that upon purchase of the said parcel of land, the deceased took possession of the suit land; that after the death of his father in the year 1994, they agreed with the Defendants on how the suit property should be demarcated and that subsequently, the Defendants encroached on the suit property and that the Defendants should give vacant possession of the suit property.

3. Although the Defendants were served with Summons to Enter Appearance, they neither entered appearance nor filed a Defence.

4. The matter proceeded for formal proof on 12<sup>th</sup> July, 2016.

5. The Plaintiff, PW1, informed the court that the suit property belongs to his late father; that his father bought the land from Mr. Kazungu Rajab on 25<sup>th</sup> June, 1998 and that in the year 2012, the Defendants invaded the suit property.

6. It was the evidence of PW1 that he reported the issue of the invasion of the suit land by the Defendants to the Assistant Chief who referred them to the DO.

7. According to the statement of PW1, he planted 500 casurina trees on the suit land with the knowledge of the Defendants and that they never raised any objection.

8. PW2 informed the court that the Plaintiff's father was his neighbour; that the Plaintiff's father bought the suit property from him on 25<sup>th</sup> June, 1988 for Kshs.11,750 and that it was not until the year 2011 when the Defendants invaded the suit land.

9. The evidence produced in this court shows that the Plaintiff took out limited letters of administration in respect to his father's estate.

10. The Plaintiff also produced in evidence the agreement dated 25<sup>th</sup> June, 1988 that his father entered into with the vendor.

11. The evidence before me shows that it is the Plaintiff who is entitled to the suit land.

12. In the absence of evidence by the Defendants to controvert the Plaintiff's assertions and documents, I find and hold that the Plaintiff has proved his case on a balance of probabilities.

13. For those reasons, I allow the Plaint dated 22<sup>nd</sup> January, 2015 in the following terms:-

**(a) The Defendants do give vacant possession of the suit land.**

**(b) The Defendants' structures standing on the suit land be demolished by either the Defendants themselves or the Plaintiff.**

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

Dated, signed and delivered in Malindi this 14<sup>th</sup> day of **November**, 2016.

**O. A. Angote**

**Judge**