



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 95 OF 2015

1. ALPHONCE MWALUNGO JAJI

2. ATHANAS MWALUNGO MWAMABO

3. SULEIMAN JAJI (suing as legal representatives of the estate of

MWALUNGO MWAMBAO BOKORO
(DECEASED).....PLAINTIFFS/APPLICANTS

=VERSUS=

1. SHADRACK NZAI

2. MATANAO NZAI.....DEFENDANTS/RESPONDENTS

R U L I N G

Introduction:

1. The Application dated 11th June 2013 by the Applicant is seeking for the following orders:

(a) The Defendants either by themselves, servants, agents, employees, representatives or any other person dealing, acting for or on their behalf be restrained by way of temporary injunction from denying the Plaintiffs' entry into and from all that parcel of land known as CHONYI/MWARAKAYA/94 (originally comprising of CHONYI/MWARAKAYA/160) harvesting mature crops standing thereon, and user thereof pending the hearing and determination of this suit or further orders of this Honourable Court.

(b) Costs be in the cause.

The Plaintiff's case:

2. The 1st Plaintiff has deponed that the suit property was occupied by one Bokoro Kafuno, his great grandfather; that upon the demise of his great-grandfather, the suit property was held under a joint tenancy of five people, all being brothers and heirs of Bokoro Kafuno and that when one of the co-owners died, the share devolved in his father Mwalungo Mwabao Bokoro.
3. It is the Plaintiffs' case that they have cultivated the suit property until 21st June 2012 when they

- were summoned by the Chief and that they have since paid monies which their father borrowed and charged the suit property.
4. It is the Plaintiffs' deposition that the Defendants have denied them entry on to the land.

The Defendants' case:

5. The 2nd Defendant deponed that parcel of land number Kilifi/Mwarakeya/94 was registered on 25th March 1975 and that since adjudication and registration, it is them who have been cultivating and planting crops on the land.
6. It is the 1st Defendant's case that the Applicants invaded the suit property in the year 2012 and the are Chief and DO advised them to keep off the property.
7. According to the 1st Defendant, the 2nd Defendant died in 1973 and that if the Plaintiffs had any cause of action, they should not have waited for 38 years before filing the suit.
8. The 1st Defendant has deponed that the Plaintiffs are staying and cultivating plot number Chonyi/Mwarakaya/160 which is adjacent to the suit property and that they do not deserve the orders they are seeking.
9. The parties filed brief written submissions which I have considered.

Analysis and findings:

10. The Plaintiffs are seeking for an order of rectification of the register in respect of parcel of land known as Chonyi/Mwarakaya/94 registered in the name of the Defendants.
11. According to the Plaintiffs, the Defendants made false representations to the Registrar of lands and obtained the title deed.
12. The Certificate of Search annexed on the Application shows that the suit property was registered in favour of the Defendants on 25th March 1975.
13. The Plaintiffs have not satisfactorily explained to this court why they delayed challenging the issuance of the title deed to the Plaintiff since 1975.
14. The Plaintiffs have also not denied that they are residing on a different piece of land and not the suit property.
15. Considering that the suit property is registered in favour of the Defendants and in view of the fact that the Plaintiffs only raised the issue of the proprietorship of the suit property in the year 2012, I find and hold that they have not established a prima facie case with chances of success.
16. The Plaintiffs will not suffer any irreparable damage that cannot be compensated by an award of damages because they are not in possession of the suit property. Indeed, the Plaintiffs did not deny that they are residing on a different piece of land all together.
17. For the foregoing reasons, I dismiss the Plaintiffs' Application dated 11th June 2013 with costs.

Dated and delivered in Malindi this 19th day of June, 2015.

O. A. Angote

Judge