



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.184 OF 2013

1. VUE TAURE VUE

2. TSORI CHIWAI SUDI.....PLAINTIFFS

=VERSUS=

1. FELIX TSORI

2. DANCAN JAMES WAITA.....DEFENDANTS

J U D G M E N T

1. The suit was commenced by way of a Plaint dated 17th October 2013. the Plaint was amended on 25th August 2014.
2. In the Amended Plaint, the Plaintiffs are claiming for a declaration that the Defendants are holding the title documents in respect of Kilifi/Vyumbani/92 which has since been sub-divided in trust for them and in the alternative for an order that they have acquired the title to the land they occupy by virtue of the doctrine of adverse possession.
3. Although the Defendants were served with Summons to Enter Appearance and the Plaint, they neither entered appearance nor filed a Defence.
4. The 1st Plaintiff, PW1, informed the court that he is from Vyumbani village, Kauma Location.
5. It was the evidence of PW1 that it is his grandfather who bought parcel of land number Kilifi /Vyumbani/92. His father, according to PW1, was born on the land in 1918.
6. According to the 1st Plaintiff, he has been living on the land since he was born in 1947 and has been cultivating the same.
7. During the adjudication process, PW1 informed the court that he was in Lungalunga although his family was still living on the suit premises.
8. It was the evidence of PW1 that he later learnt that the 1st Defendant had the whole land registered in his name. The Plaintiffs sue the 1st Defendant at the Dispute Land Disputes Tribunal.
9. PW1 informed the court that the Tribunal decided the case in their favour.
10. The second Plaintiff, PW2, echoed the evidence of PW1.
11. PW3 stated that from 1960, him and his family owned land which neighbours the suit property.
12. According to PW3, the 1st Defendant took possession of the suit property around the year 2000. It was his evidence that the land belongs to Chiwai Sudi.
13. The other neighbour of the Plaintiffs, PW4, stated that the suit property belongs to the Plaintiffs, the Plaintiffs having inherited it from their father.

Analysis and findings:

14. The Plaintiffs produced in evidence a copy of the official search for land known as Kilifi/Vyumbani/92.
15. According to the search, the title deed for the said property was issued to the 1st Defendant on 13th November 2005. On 18th April 2013, the register in respect to the suit property was closed upon sub-division vide mutation number 0399337.
16. The sub-division of Kilifi/Vyumbani/92 created parcel numbers 353, 354, 355, 356 and 359.
17. The Plaintiffs also produced in evidence the Judgment that was delivered by the Bahari Land Dispute Tribunal in Land Case Number 60 of 2007 on 24th July 2007.
18. After hearing all the parties, the Tribunal found that during the adjudication process, the 1st Defendant gave to the land officials false information and the suit property was registered in his name.
19. According to the decision of the Tribunal, the 1st Plaintiff gave to the 1st Defendant his identity card for the purpose of presenting his name during the adjudication process but instead the 1st Defendant presented his own national identity card.
20. The Tribunal found in favour of the Plaintiffs herein.
21. There is no evidence that the 1st Defendant did file an appeal in respect of the decision of the Tribunal.
22. The Defendants did not call evidence to controvert the Plaintiffs' evidence that the suit property was registered in favour of the 1st Defendant fraudulently.
23. In the circumstances, and based on the evidence before me, I find and hold that the Plaintiffs have proved that the 1st Defendant could only have been registered as the proprietor of the suit property as a trustee.
24. For those reasons, I make the following orders:

(a) A declaration be and is hereby issued that the Defendants are holding the title documents for Kilifi/Vyumbani/92 which has been subdivided to create parcel numbers 353, 354, 355, 356 and 357 in trust for the Plaintiffs.

(b) An order be and is hereby issued directed to the District Land Registrar, Kilifi to amend and rectify the register by registering the Plaintiffs as the proprietors of the parcel of land known as Kilifi/Vyumbani/93 as tenants in common.

(c) The District Land Registrar, Kilifi to issue to the Plaintiffs the Title Deed in respect of Kilifi/Vyumbani/92 without requiring the surrender of the original title deed or the title deeds for the subsequent sub-divisions.

(d) The 1st Defendant to pay the costs of the suit.

Dated and delivered in Malindi this 24th day of July 2015.

O. A. Angote

Judge