



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.24 OF 2015

RAPHAEL MURE YAA.....PLAINTIFF

=VERSUS=

NYEVU NYANJEL.....DEFENDANT

J U D G M E N T

1. In the Plaint dated 4th February 2015, the Plaintiff has averred that at all material times, he was the legal owner of parcel of land known as Kilifi/Ngerenyi/223 (the suit property); that the Defendant has trespassed on the suit property and constructed illegal structures thereon and that his constitutional right over the suit property has been violated.
2. The Defendant entered appearance through the firm of Mwahunga Mtana and Co. Advocates on 13th March 2015. However a defence was never filed.
3. The matter proceeded for formal proof on 7th October 2015.
4. PW1 informed the court that he bought the suit property in the year 2013. After the succession proceedings, PW1 stated that he was issued with the title document and then traveled to Saudi Arabia.
5. The evidence of PW1 was that when he came back to Kenya in December 2013, he found the Defendant had put up structures on his land.
6. The Plaintiff's evidence is uncontroverted. Indeed, the Defendant did not file a Defence to rebut the allegations raised in the Plaint.
7. The Agreement dated 17th April 2013 shows that the Plaintiff purchased the suit property from Chengo Kajole Kombe for Kshs.1,200,000.
8. The transfer document was registered in favour of the Plaintiff on 27th August 2014 and thereafter a title deed was issued in the name of the Plaintiff on 2nd October 2014.
9. Considering that there is no evidence before me that the Plaintiff was fraudulently issued with a title deed for parcel of land known as Kilifi/Ngerenyi/223, I find and hold that the Plaintiff has proved his case on a balance of probabilities.
10. In the circumstances, and for the reasons I have given above, I allow the Plaint dated 4th February 2015 in the following terms.

(a) A permanent injunction be and is hereby issued restraining the Defendant, her servants, agents, workers, employees and or whomsoever from interfering with the Plaintiff's quiet and peaceful enjoyment and use of parcel of land known as Kilifi/Ngerenyi/223.

(b) An order be and is hereby issued compelling the Defendant to demolish the structure(s) on parcel of land known as Kilifi/Ngerenyi/223 at her own costs and hand over vacant possession of the land to the Plaintiff.

(c) If the Defendant does not demolish the structures(s) on the suit land within 14 days, the court bailiff to demolish the said structure(s) at the Defendant's costs.

(d) The OCS, Kilifi police station to provide security during the eviction of the Defendant from the suit premises.

(e) The Defendant to pay the costs of the suit .

Dated and delivered in Malindi this 20th day of November 2015.

O. A. ANGOTE

JUDGE