



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 68 OF 2013

CHARO NZAI CHOGO.....PLAINTIFF

=VERSUS=

JACKSON KARISA NGALLA.....DEFENDANT

J U D G M E N T

Introduction

1. In the Amended Plaint dated 11th May 2012 and filed on the same day, the Plaintiff is seeking for an order of permanent injunction restraining the Defendant, his agents, servants, employees or any other persons acting on the Defendant's behalf from encroaching, disposing of, constructing, developing, alienating or interfering in any manner with land known as Kilifi/Madunguni "A"/155.
2. Although the firm of Mouko & Company Advocates entered appearance on behalf of the Defendant on 22nd May 2012, they did not file a defence. The matter proceeded for formal proof on 3rd December 2013.

Plaintiff's case:

3. The Plaintiff informed the court that the Defendant, without his permission, purchased land known as Kilifi/Madunguni "A"/155 (hereinafter known as the suit property) from his son. When PW1 discovered that his son, Nzai had sold the suit property to the Defendant at a consideration of Kshs.40,000, he reported to the area chief.
4. The Plaintiff further informed the court that he subsequently refunded to the Defendant the Kshs.40,000 that he had paid to his son. The Defendant has however refused to vacate the suit property.
5. The Plaintiff produced in evidence the original title deed in respect to the suit property and the agreement between him and the Defendant in respect to the refund of Kshs.40,000 that they made before the Chief. The Plaintiff also produced as exhibit number 3 a demand letter that was issued to the Defendant by his advocate requiring the Defendant to leave the suit property.
6. The area Chief, PW2, informed the court that an agreement was entered into between the Plaintiff and the Defendant over the suit property. In the agreement, the Defendant agreed to vacate the suit property upon being paid Kshs.40,000 which he was duly paid. PW2 informed the court that the Defendant has never vacated the property despite being refunded the Kshs.40,000.
7. The Plaintiff's advocate made an oral Application under section 100 of the Civil Procedure Act to include a prayer in the Plaint for the eviction of the Defendant from the suit property. I allowed

the Application.

Analysis and Findings

8. The averment in the Plaintiff and the evidence of PW1 and PW2 is uncontroverted. I have perused Plaintiff's exhibit number 1 which is the title deed for Kilifi Madunguni "A"/155. The title deed is in the name of Charo Nzai Chogo, the Plaintiff.
9. The said title deed clearly shows that the person who purported to sell the suit property to the Defendant was not the registered proprietor and consequently had no legal standing to do so.
10. I have also perused the Agreement that was entered into between the Plaintiff and the Defendant dated 7th March 2012. The agreement shows that the Plaintiff refunded to the Defendant Kshs.40,000 which the Defendant had paid to the Plaintiff's son for the sale of the suit property. Indeed, the Plaintiff was not under any obligation to refund the Defendant the said amount in view of the fact that the money was never paid to the Plaintiff. It was an act of magnanimity for the Plaintiff to refund the said amount.
11. In the circumstances, the Plaintiff has proved his case on a balance of probabilities. The Plaintiff is entitled to peaceful and quiet enjoyment of the suit property. I shall therefore allow the Plaintiff's Amended Plaintiff dated 11th May 2012 in the following terms:

(a) An order of permanent injunction be and is hereby issued restraining the Defendant, his agents, servants, employees or any other person from encroaching, disposing of, constructing, developing, alienating and or interfering in any manner with land reference number KILIFI/MADUNGUNI "A"/155 to the detriment of the Plaintiff.

(b) The Defendant to be evicted forthwith from Land reference number KILIFI/MADUNGUNI "A"/155.

(c) The Defendant to pay to the Plaintiff the costs of the suit.

Dated and Delivered in Malindi this 24th Day of February, 2014

O. A. Angote

Judge