



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MALINDI
ENVIRONMENT AND LAND COURT
LAND CASE NO. 5 OF 2013

GUYO BAJILA HASSAN.....PLAINTIFF

=VERSUS=

- 1. GEORGE DZOMBO THE CHAIRMAN(M1 RESIDENTS WELFARE ASSOCIATION)**
- 2. MWEMA JAMES KALONGWE**
- 3. CHARLES KAREMBE**
- 4. JAMES KARISA HATI.....DEFENDANTS**

JUDGMENT

Introduction:

1. The Plaintiff sued the Defendants claiming that he owns a piece of land within land known as M1 measuring approximately 8 acres which piece has been sub divided into three portions. The first portion measuring 4 acres was given to the Nzuki family while 2 acres was donated to the Defendant's welfare for public utility. 2 acres remained with the Plaintiff.
2. According to the Plaintiff, the Defendants have since exceeded the boundaries of the land as agreed. The Plaintiff is claiming for a permanent injunction restraining the Defendants from interfering with the Plaintiff's part of M1.
3. Although the Defendants were served with the Summons to Enter Appearance, they neither entered appearance nor filed a defence.

The Plaintiff's case:

4. The Plaintiff, Pw1, informed the court that he stays on plot number 8 within parcel land known as M1. Pw 1 stated that the proprietor of M1, an Asian, sympathised with squatters and gave them his land. Every squatter was given the portion that he was occupying. The whole land was given to the resident's Welfare Organisation.
5. According to Pw1, the squatters were required to contribute money for the surveying of their respective portions. Pw1 made his contribution and was given receipts which he proved as PEXB1 a – f. He was subsequently given his portion measuring 8 acres. A dispute arose out of

- this portion and the District Officer attempted to resolve it. The Plaintiff produced as Exhibit 3 and 4 the letters authored by the District Officer.
6. After the intervention of the District Officer, an agreement was arrived at. Pw1 produced the agreement as exhibit number 5. According to the agreement, the Plaintiff informed the court that 4 acres were given to the Nzuki family while 2 acres were given to the Defendants' resident's association. The Plaintiff remained with two acres.
 7. It was the testimony of Pw1 that the Resident's Association, represented by the Defendants, now wants the 2 acres that were to remain with the Plaintiff because he does not belong to their ethnic group.
 8. Pw 2 stated that the Plaintiff is his neighbour and that the suit property belongs to the Plaintiff. Initially, the land belonged to the Plaintiff's father.

Submissions:

9. The Plaintiff's counsel filed his written submissions on 4th March 2014 and reiterated the evidence that was given by the Plaintiff's.

Analysis and findings:

10. The evidence before me shows that the Plaintiff owned 8 acres as a squatter within parcel of land M1. However, when a dispute arose between the Plaintiff, the Nzuki's family and the Resident's Welfare Association, an agreement was arrived at in writing on 15th January 2011. In the agreement, it was agreed that the 8 acres be subdivided into 3 portions. The Plaintiff was to retain 2 acres, the sit property.
11. That agreement has not been challenged by the Defendants or the Nzuki's family.
12. In the circumstances, I find and hold that the Plaintiff has proved his case on a balance of probabilities. He should be allowed to retain the suit property as agreed. I therefore allow the Plaintiff's Plaint dated 14th January 2013 as prayed.

Dated and delivered in Malindi this 8th day of May, 2014.

O. A. Angote

Judge