



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

CIVIL CASE NO. 40 OF 2012

**JOSEPH TOMMY NGUMA (the administrator of the Estate of THOMAS NGUMA
GONA).....PLAINTIF**

=VERSUS=

BENSON NGALA CHOME.....DEFENDANT

JUDGMENT

Introduction:

1. The Plaintiff filed a Plaint dated 25th October, 2013 claiming that the Defendant has denied the Plaintiff to access his land being parcel number 549/kikombe.
2. According to the Plaintiff, the Defendant sold to him the suit property and initially gave him vacant possession. However, in the year 2011, the Defendant developed a habit of trespassing and entering the suit property and cultivating thereon.
3. The Plaintiff is claiming for a permanent injunction order restraining the Defendant from trespassing and entering on the suit property.
4. The Defendant did not file a defence although he was duly served with Summons to Enter Appearance and the Plaint. The matter proceeded in the absence of the Defendant.

The Plaintiff's case:

5. According to the evidence of the Plaintiff, Pw1, his late father bought the suit property from the Defendant on 7th November 2004.
6. Pw1 produced in evidence the sale agreement between his late father and the Defendant as PEXB1. Pw 1 also produced as PEXB2 the limited letters of administration.
7. When the Plaintiff's father died on 19th October, 2010, it is the Plaintiff's case that the Defendant encroached on the suit property and started cultivating it. It was the Plaintiff's evidence that the Defendant has continued to occupy the suit property until now.
8. Pw2, the Plaintiff's neighbour, informed the court that he is aware that the Defendant sold the suit property to the Plaintiff's father.
9. According to Pw2, the agreement between the Plaintiff's and the Defendant was actualised in his house and he witnessed the signatures of the two.

Analysis and findings:

10. The Plaintiff's claim has not been opposed by the Defendant. The Plaintiff produced as exhibit 1

the sale agreement showing that indeed his late father purchased the suit property from the Defendant. The Defendant was paid the purchase price in installments.

11. The sale agreement that the parties entered into was produced in court as an exhibit. The said evidence has not been rebutted by the Defendant.

12. Consequently, I find that the Plaintiff has proved his case on a balance of probabilities. I therefore allow the Plaintiff's Plaint dated 25th October, 2013 as drawn.

Dated and delivered in Malindi this **20th** day of **June**, 2014

O. A. Angote

Judge