



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 147 OF 2013

JUSTUS NGUMA.....PLAINTIFF

=VERSUS=

1. GONA BAHARI
 2. GONDO GONA
 3. KAZUNGU GONA
 4. KATANA GONA
 5. CHARO MUNGELA
 6. GONA MUNGELA
 7. JUMAA SAUM KALAMA
8. KENGA JASHODEFENDANTS

J U D G M E N T

Introduction:

1. In the Plaint dated 22nd August 2013, the Plaintiff has prayed for orders of eviction against the Defendants from plot number 336 Shauri Moyo Settlement measuring approximately 30 acres (the suit property).
2. The Plaintiff has averred in the Plaint that he is the registered owner of the suit property having been allocated the land by the Magarini Settlement project vide a letter of offer dated 29th July 1999.
3. The Plaintiff has alleged in the Plaint that the Defendants were all along living in Mizijini on plot number 89 but they left that land and settled on the suit property.
4. Although the Defendants were served with the Plaint and the Summons to Enter Appearance, they neither entered appearance nor filed a defence.

The Plaintiff's case:

5. The Plaintiff, PW1, informed the court that he is the registered proprietor of the suit property

- having been allocated the same by the Magarini Settlement Project in Magarini where he was born and resides.
6. It was the evidence of PW1 that he made all the requisite payments and that the Defendants, who have land in Mizijini have invaded his land and are illegally occupying approximately three acres.
 7. The Plaintiff produced the documents in support of his case as PEXB 1 to PEXB 8.
 8. According to PW1, he paid the 1st Defendant, who is the father of the 2nd, 3rd and 4th Defendants but the Defendants have refused to vacate the land.

Analysis and findings:

9. The Plaintiff's case is that he is the proprietor of land known as Shauri Moyo Settlement Scheme, Plot number 336.
10. The Plaintiff produced in evidence the letter of offer dated 29th July, 1999 which shows that he was allocated the said land by the Government through the Director of Land Adjudication and Settlement on 29th July 1999.
11. The Plaintiff also produced in evidence the charge that was created over the suit property in favour of the Settlement Fund Trustee and receipts showing the payments he made as required under the said charge.
12. In the letter dated 2nd November 2011, the District Land Adjudication and Settlement Officer advised the Director that the Plaintiff had made all the requisite payments under the charge and requested the Director to issue to the Plaintiff a discharge of charge. The Plaintiff is awaiting the issuance of a title.
13. On the basis of the evidence placed before me, I am satisfied that the Plaintiff is the legitimate proprietor of the suit property. The Plaintiff's evidence has not been controverted. In the circumstances, I find and hold that the Plaintiff has proved his case on a balance of probabilities.
14. For those reasons, I allow the Plaintiff's Plaint dated 22nd August, 2013 in the following terms:

(a) An eviction order be and is hereby issued against the Defendants, their servants, agents, family members and any person claiming interest through them from plot number 336/Shauri Moyo Settlement Scheme measuring approximately 30 acres.

(b) The Defendants to pay to the Plaintiff the costs of the suit.

Dated and delivered in Malindi this 28th day of November, 2014.

O. A. Angote

Judge