



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 35 OF 2012

FATUMA SAID SALIM.....PLAINTIFF

=VERSUS=

CHARO RIIRII.....DEFENDANT

JUDGMENT

Introduction

1. On 17th October 2012, the Plaintiff moved this court by way of a Plaint seeking for the following reliefs:

(i) Injunctive orders restraining the Defendant, his servants, agents, employees or any other person from disposing of, developing, constructing, or interfering in any manner whatsoever with the suit property pending hearing and determination of this suit.

(ii) Eviction and demolition orders to be issued against the Defendant, his servants, family members, agents or any other person acting on his behalf.

2. The Defendant was served with Summons to Enter Appearance and the Plaint but he did not enter appearance. The matter proceeded for formal proof on 24th July 2013.

Plaintiff's case

3. The Plaintiff averred in her Plaint that sometimes in the month of July 2008, the Defendant trespassed onto plot number 10719/258 (the suit property) and commenced putting up structures.
4. The Plaintiff further averred that when she inquired from the Plaintiff why he was on her plot, the Plaintiff chased her away and threatened her with serious consequences in the event she attempted to occupy the suit property; that the Defendant was summoned by the chief to resolve the dispute which summons the Defendant refused to comply with and that later on the Municipal Council of Malindi issued a notice requiring the Defendant to demolish the illegal structures on the suit property which the Defendant ignored.
5. The Plaintiff finally averred in her Plaint that she has suffered loss and damages due to the unlawful acts of the Defendant.
6. When the matter came up for formal proof, the Plaintiff, PW1, stated that the Defendant who is her neighbour invaded her plot. When she inquired from the Defendant why he was invading her plot, the Defendant threatened her with violence.

7. It was PW1 evidence that the Defendant has gone ahead to construct a house on the land and sold part of the plot.
8. The Plaintiff produced the indenture dated 17th July 2004 as exhibit number 1 and a deed plan number 255142 as exhibit number 2.
9. It was the Plaintiff's testimony that she bought the land from an organization known as Maisha Mapya.
10. According to the Plaintiff, she has been paying land rates to the Municipal Council of Malindi. She produced as exhibit number 3a-h the receipts issued by the Council. The Plaintiff also produced in evidence the demand letters which she issued to the Defendant as exhibit number 4.
11. The Plaintiff further produced in evidence the a copy of letters from the chief and the Municipal Council of Malindi addressed to the Plaintiff as exhibit numbers 5, 6 and 7a-c.
12. It was the Plaintiff's prayers that the Defendant should be evicted from the suit property.

Analysis

13. The Plaintiff's evidence was not challenged by the Defendant. The Plaintiff showed by an indenture dated 17th July 2004 that she bought the suit property from Maisha Mapya Self Help Group. The Plaintiff has therefore proved that she is the owner of the suit property.
14. I have also perused the "property rates and payment requests" from Municipal Council of Malindi. The said requests and receipts shows that the suit property belongs to the Plaintiff.
15. The Plaintiff has made efforts through the chief and the Municipal Council of Malindi to have the Defendant move out of her property without success.
16. In view of the Plaintiff's evidence and documents, and considering that the said evidence was not rebutted by the Defendant, I find and hold that the Plaintiff has proved her case on a balance of probabilities.
17. In the circumstances, and for the reasons I have given above, I allow the Plaintiff's claim as drawn in the Plaint dated 17th October 2012.

Dated and Delivered in Malindi this **18th** day of **October**, 2013

O. A. Angote

Judge