



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 18 OF 2017

TIMOTHY MWAGUNDZA TUNJE.....PLAINTIFF

VERSUS

1. MWATATA PIRI JEU

2. MWAKAI GAMBO alias Kamsusu

3. SHUKU CHIRONDA KUSEMA

4. JULIUS NZIVO MWACHIRO.....DEFENDANTS

JUDGMENT

1. By this Plaint dated and filed herein on 3rd February 2017, the Plaintiff Timothy Mwangundza Tunje prays for Judgment against the four Defendants jointly and severally for orders framed as follows:-

a) Vacant possession of all that unregistered parcel of land situated at Mbuyuni Village within Mwarakaya Sub-Location in Kilifi County containing by measurement 2.5 acres or thereabouts which parcel of land is bordered to the East by Bao Mwajinje's land, to the South by (a parcel of) land belonging to Adrea Mwakrumi, to the West by Joka Kalama and to the North by Chai Kahihingo, eviction of the Defendants from the suit property and demolition of the structures erected thereon;

b) Permanent injunction against the Defendants restraining them by themselves, their servants and or agents from continuing to trespass onto the suit property, remain in possession, selling or alienating the said suit property or any part thereof or from dealing with the suit property in any manner whatsoever.

2. It is the Plaintiff's case that at all times material, he was the beneficial owner entitled to the said unregistered parcel of land. However, sometimes in the year 2000, the 1st Defendant invaded the suit property and started laying a claim thereon. Consequently, the Plaintiff filed Land Dispute Case No. 9 of 2000 before the Chonyi Division Land Disputes Tribunal which tribunal rendered a decision in favour of the Plaintiff.

3. The Plaintiff avers that subsequent to the Tribunal's decision and unknown to him, the 1st Defendant proceeded to sell the suit property to the 2nd, 3rd and 4th Defendants who then proceeded to take possession thereof and have erected structures thereon without the Plaintiff's consent and/or authority. In spite of demand made and notice of intention to sue, the Defendants have refused to demolish the structures and/or vacate the suit property and thereby rendering this suit necessary.

4. On 29th March 2017 after service of Summons herein, all the Defendants filed both a Memorandum of Appearance and a Notice of Appointment of Advocates through M/s Michira Messah & Company Advocates, Malindi. As it were, neither the Defendants nor the said Law Firm filed any Defence in regard to the matters raised in the Plaint. This matter subsequently proceeded by way of formal proof.

5. At the trial herein, the Plaintiff testified as his sole witness. Through a Statement dated and filed herein on 3rd February 2017, he told the Court that he was the beneficial owner entitled to the suit property having inherited the same from his ancestors.

6. The Plaintiff told the Court that he has never sold the land to anyone. However, sometime in the year 2000, the 1st Defendant invaded the land and started laying a claim thereon. Subsequently the 1st Defendant stopped the Plaintiff's family from collecting firewood from the trees in the suit property as a result of which the Plaintiff instituted Chonyi Division Land Disputes Tribunal Case No. 9 of 2000.

7. It was further the Plaintiff's case that on the 17th November 2000, the Tribunal rendered a decision in his favour and ordered the 1st Defendant to vacate the land. He produced a copy of the proceedings and the decisions of the Tribunal.

8. The Plaintiff further told the Court that subsequent to the Tribunal's decision and without his knowledge, the 1st Defendant secretly proceeded to sell and alienate the suit property to the 2nd, 3rd and 4th Defendants. The said Defendants have since taken possession of their respective portions of the land wherein they have erected structures and buildings.

9. The Plaintiff told the Court that the Defendants have no colour of right whatsoever to the suit property and urged the Court to grant him vacant possession thereof.

10. I have considered the Plaintiff's case and the evidence placed before me. The Defendants' entered appearance on 29th March 2017 but did not file any Defence to the Claim.

11. From his testimony before this Court the Plaintiff stated that he was the beneficial owner of the suit property having inherited the same from his forefathers. However sometimes in the year 2000, the 1st Defendant laid a claim to the suit property and stopped the Plaintiff and his family from using the same.

12. It was the Plaintiff's case that this turn of events prompted him to file Land Disputes Tribunal Case No. 9 of 2000 before the Chonyi Divisional Tribunal. The Tribunal heard both parties after which it rendered a decision in favour of the Plaintiff. The Plaintiff produced a copy of the proceedings and the Decision thereof as Pexh 1.

13. It is apparent from an extract attached to the proceedings that the decision of the Tribunal was adopted as an order of the Kilifi Senior Resident Magistrates Court on 25th October 2001. The Court proceedings taken before the Honourable PM Mutani SM in the presence of both parties read as follows:-

"Court:-

Award in Open Court this 25/10/2001, any objections be filed within 30 days of this order, otherwise the award will be confirmed."

14. According to the Plaintiff, no Appeal was filed against the said decision. In the absence of any evidence on the contrary, this Court did not doubt the fact that the decision was not appealed and/or set aside. As it were, Section 7 of the Land Disputes Tribunal Act(now repealed) provided as follows:-

"7(1) The Chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the Magistrates Court together with any depositions or documents which have been taken or proved before the Tribunal."

(2) The Court shall enter Judgment in accordance with the decision of the Tribunal and upon Judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.

15. Arising from the foregoing, it is my considered view that the Judgment as rendered in the Land Disputes Tribunal and adopted by the Kilifi Magistrates Court on 27th October 2001 is a binding on the Defendants and the purported sale and/or alienation of the suit property by the 1st Defendant is null, void and incapable of passing any valid interest in the suit property to the 2nd, 3rd and 4th Defendants.

16. From the material placed before me, it is apparent that the Defendants have remained in wrongful occupation and possession of the suit property as a result of the 1st Defendant's acts and/or omission to vacate the same. The said acts and/or omissions continue to not only deny the Plaintiff use of the suit property but are also wasteful thereof as the 2nd, 3rd and 4th Defendants are said to be continuing to erect structures thereon.

17. In the circumstances of this case and in the absence of any challenge to the Plaintiff's testimony and evidence, I am satisfied that he has proved his case against all the Defendants on a balance of probabilities. Accordingly Judgment is hereby entered for the Plaintiff as prayed in the Plaint.

18. As I did not see any evidence of notice of intention to sue served upon the Defendants, I shall make no orders as to costs.

Dated, signed and delivered at Malindi this 26th day of June, 2019.

J.O. OLOLA

JUDGE



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)