



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 223 OF 2017

CHAKA GWARU MUHAMBI.....PLAINTIFF

VERSUS

MUPA MUNGA DEFENDANT

JUDGMENT

(Plaintiff and defendant having a dispute over land located in a Group Ranch; dispute having been heard internally by the Group Ranch through its conflict resolution committee; Committee holding that it is the plaintiff who is entitled to use of the land; defendant nevertheless continuing to use the land; plaintiff now suing for an order of eviction and vacant possession and to have the defendant permanently restrained from the land; no defence filed by the defendant; court having no reason to depart from the decision of the Group Ranch Committee; judgment entered in favour of the plaintiff)

1. The suit herein was commenced through a plaint which was filed on 21 June 2017 against one Munga Charo and Mupa Munga. The suit against Munga Charo was withdrawn ostensibly because he died. There is therefore only one defendant, Mupa Munga. The plaint was later amended on 29 October 2020 to reflect this position and to also add some prayers. In the amended plaint, the plaintiff has pleaded that he is the owner of land measuring 1.5 acres situated in Mwavumbo Group Ranch, in Mariakani, Kilifi County. He avers that this land is family land having been passed to him from previous generations. He also pleads adverse possession to this land. The plaintiff pleads that he had a dispute with the defendant which was heard on 9 November 2014 by the Mwavumbo Group Ranch Management Board and the verdict was to the effect that it is the plaintiff who is the legitimate owner. It is pleaded that despite the verdict, the defendant has continued to cultivate and occupy the land. The plaintiff seeks a declaration of ownership of the land; orders of eviction and vacant possession; and a permanent injunction against the defendant to restrain him from interfering with the plaintiff's quiet enjoyment of the land.

2. The defendant did not file any defence and neither did he attend court at the hearing of the suit despite being duly served.

3. In his evidence, the plaintiff stated that the defendant is a neighbour and that it was after his (plaintiff's) parent's death that they started claiming the disputed land. He referred the dispute to the Group Ranch officials who held in his favour. He produced the minutes of the meeting that the Group Ranch held. Another meeting was held on 11 May 2016 which minutes he also produced. He stated that the Group Ranch officials held in his favour and even wrote to the defendant a letter dated 9 April 2016 which the defendant has ignored.

4. The only material that I have is that provided by the plaintiff and I have gone through the same. The first document produced by the plaintiff are minutes of the Mwavumbo Group Ranch dated 9 November 2014. The meeting was held to resolve the land dispute between the plaintiff and Munga Charo. The dispute was resolved in favour of the plaintiff herein. It appears as if Munga Charo was aggrieved, and another meeting to resolve the dispute was held, this time by the Divisional Conflict Resolution Committee of

Mwavumbo Group Ranch. In a resolution passed on 11 May 2015, the dispute was yet again resolved in favour of the plaintiff. I have seen the letter dated 9 April 2016 from the Mwavumbo Group Ranch addressed to Munga Charo. In it, the Chairman of the Group Ranch informs Munga Charo to stop working on the disputed land since it had already been resolved in favour of the plaintiff herein. The defendant herein, Mupa Munga, from what I can gather from the proceedings of the Committee of the Group Ranch, is wife to Munga Charo. The plaintiff complains that despite the above verdicts, she is still interfering with the suit land.

5. I have no reason to doubt the plaintiff. The disputed land is located in a Group Ranch and is yet to be demarcated. It is the Group Ranch officials who are best placed to give directions on who is to work land and where. If it has already been resolved by the Group Ranch that it is the plaintiff who is entitled to utilise the suit land, I see no basis why I should not hold in his favour. The defendant has not come to court to explain any contrary position or assert why she should be allowed to utilise the suit land.

6. I therefore enter judgment in favour of the plaintiff on the basis of the decisions of the Group Ranch and not based on any claim for adverse possession, which the plaintiff also pleaded. Adverse possession will need to be a claim against the registered proprietor, in this case, the Group Ranch. What is at stake is really rights to work land within a Group Ranch, and not necessarily title to land within the Group Ranch. The Group Ranch has already resolved that it is the plaintiff who is the person entitled to work on the disputed land and not the defendant and this court affirms that position.

7. In light of the foregoing, this court hereby issues an order directing the defendant (Mupa Munga) and/or her servants/agents or any person acting at her behest, to give vacant possession of the disputed land which is located within Mwavumbo Group Ranch within the next 14 days. If she does not do so, the plaintiff is at liberty to evict her from the said land. I also issue an order permanently restraining the defendant from entering, tilling, cultivating, grazing cattle, or in any other way, interfering with the plaintiff's possession of the disputed land. The plaintiff shall also have the costs of this suit as against the defendant.

8. Judgment accordingly.

DATED AND DELIVERED THIS 13TH DAY OF APRIL , 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA



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