



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**LAND CASE NO. 122 OF 2013**

**SOFIA ALI MBARAK.....PLAINTIFF**

**=VERSUS=**

**BEJA SALIM MATEMO.....1<sup>ST</sup> DEFENDANT**

**KAZUNGU BEJA.....2<sup>ND</sup> DEFENDANT**

**J U D G M E N T**

**Introduction**

1. The Plaintiff filed the Plaint herein on 30<sup>th</sup> July 2012 seeking for the following reliefs:

- (a) The Defendants by themselves and/or agents/servants hiring's be restrained by way of permanent injunction from interfering with the Plaintiff's peaceful ownership of plot number 151/3 Ganda.**
- (b) An order evicting the defendants from the suit premises**
- (c) Costs of this suit**
- (d) Any other reliefs that this court may find just to grant.**

- 2. In the Plaint, the Plaintiff averred that she is the owner of plot number 151/3 Ganda in Kilifi (the suit property). According to the Plaintiff, she bought the suit property from Amina Shaban bin Maftah; that on 13<sup>th</sup> May 2006, the 1<sup>st</sup> Defendant requested the Plaintiff to allow him and his family to live on the suit property on condition that they would not have any right over the land and that the 1<sup>st</sup> Defendant committed himself in writing to comply with the said arrangements.
- 3. The Plaintiff finally averred that the Defendants have continued to deny the Plaintiff peaceful occupation of the suit property by trespassing and occupying the suit premises after being informed to vacate. The Plaintiff particularised the damages that he has allegedly incurred after

the Defendants damaged his crops.

4. The Defendants were served with Summons to Enter Appearance and on 3<sup>rd</sup> September 2013, the firm of Richard & Company Advocates entered appearance for the Defendants. However, a Defence was never filed and the matter proceeded for formal proof on 30<sup>th</sup> July 2013.

#### **Plaintiff's Evidence:**

5. The Plaintiff, PW1, informed the court that the suit property initially belonged to her grandmother who sold it to her for Kshs.60,000. The Plaintiff produced the sale agreement as exhibit number 1.
6. The Plaintiff testified that after she purchased the suit property, she took possession of the land by farming. The 1<sup>st</sup> Defendant requested her in writing for a place to stay. According to the agreement between the 1<sup>st</sup> Defendant and the Plaintiff, the Defendants were to leave the suit property upon demand. The Plaintiff produced the agreement between herself and the 1<sup>st</sup> Defendant as exhibit number 2.
7. It was the Plaintiff's evidence that she subsequently asked the Defendants to vacate the suit property which they refused even after agreeing to leave in writing. Instead, the Defendants proceeded to damage the Plaintiff's crops which damage was assessed by the agricultural officer. The Plaintiff produced as MFI 4 the assessment report.
8. The Plaintiff produced the consent of the Land Control Board and the receipts evidencing the payment she has made to the Land Control Board for the purpose of sub-dividing the land as exhibit number 5. PW1 also produced as exhibit number 6 the sub-division plan of the suit property from the survey office, Malindi.
9. David Mwanyura Baya, PW2, informed the court that he works at Gede Location, Kilifi County as an Agricultural Officer in the Ministry of Agriculture. The witness stated that his work includes assessment of damages of crops.
10. It was PW2 evidence that in March 2013, he received a letter from the area Chief requesting him to prepare an assessment of the loss that the Plaintiff had incurred when his crops were damaged by the Defendants. PW2 stated that he visited the suit property in the company of the village elder and assessed the damage to the crops at Kshs.27,675. PW2 produced the assessment report as Plaintiff's exhibit number 4.

#### **Analysis and findings**

11. The Defendants did not file a defence in this matter
12. According to the evidence of PW1 and the agreement dated 13<sup>th</sup> May 2006 which was produced as exhibit no. 1, the Plaintiff allowed the 1<sup>st</sup> Defendant to occupy her land on condition that he will vacate the land as and when the Plaintiff required it.
13. I have also perused the Plaintiff's exhibit number 3 which is a letter by the 1<sup>st</sup> Defendant in which he agreed to leave the suit property with his family. It appears that the Defendants never left the suit property even after promising to leave in May 2008 in writing before the area Chief.
14. PW1 informed the Court that the Defendants allowed their animals to graze on his crops which included cassava and mango trees. PW2 produced the assessment report for the damaged crops. According to PW2, he put the value of the damaged crops at Kshs.27,675.
15. The Plaintiff's evidence was uncontroverted. Having analysed the said evidence, I am satisfied that the Plaintiff has proved her case on a balance of probability.
16. In the circumstances and for the reasons I have given above, I allow the Plaintiff's claim in the following terms:
  - a. **The Defendants by themselves and/or agents, servants and hiring's be and are hereby**

restrained by way of permanent injunction from interfering with the Plaintiff's peaceful ownership of plot number 151/3 Ganda.

- b. An order evicting the defendants from the suit premises be and is hereby issued.
- c. Special damages of Kshs. 27,675 be and is hereby awarded to the Plaintiff.
- d. The Defendants to pay the costs of the suit.

Dated and Delivered in Malindi this 27<sup>th</sup> day of November, 2013

O. A. Angote

Judge



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