



Case Number:	Civil Case 158 of 2013
Date Delivered:	28 Nov 2014
Case Class:	Civil
Court:	Environment and Land Court at Malindi
Case Action:	Judgment
Judge:	Oscar Angote
Citation:	Robert Gathua Thuku v Mohamed Sthambuli & 3 others [2014] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Kilifi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CIVIL CASE NO. 158 OF 2013**

**ROBERT GATHUA THUKU.....PLAINTIFF**

**=VERSUS=**

**MOHAMED STHAMBULI.....1<sup>ST</sup> DEFENDANT**  
**MWANATUMU ALI NDARO.....2<sup>ND</sup> DEFENDANT**  
**GRACE NYOKABI GITHOME.....3<sup>RD</sup> DEFENDANT**  
**KILIFI MUNICIPAL COUNCIL.....4<sup>TH</sup> DEFENDANT**

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

**Introduction:**

1. The Plaintiff's suit is premised on the Complaint dated 16<sup>th</sup> September 2013. In the Complaint, the Plaintiff has averred that at all material times, he has been the registered owner of land known as MN/III/1351 while plot number MN/III/592 is a road reserve.
2. According to the Complaint, the Defendants have encroached on both plots. The Plaintiff is seeking for vacant possession and *mesne* profit.
3. The Defendants neither entered appearance nor filed a Defence. The matter proceeded for formal proof on 7<sup>th</sup> July 2014.

**The Plaintiff's case:**

4. The Plaintiff, PW1, informed the court that he is the registered proprietor of plot number MN/III/1351 having bought it in May 2007. The Plaintiff produced the certified copy of the Certificate of Title for subdivision number 1351 and the postal search as PEXB 1 and 2 respectively.
5. It was the evidence of PW1 that he later on realised that he no longer had an access road to his plot. He also realised that the Defendants' two buildings were inside his land and a surveyor prepared a report to that effect.

6. According to the Plaintiff, the surveyor's report showed that the Defendants had encroached on his plot by 66.5M<sup>2</sup>.

7. The surveyor, PW2, informed the court that the Defendants have encroached on the suit property and one of the Defendants has blocked the access to his plot. PW2 produced his report as PEXB 3.

#### **Submissions:**

8. The Plaintiff's advocate filed his submissions. The said submissions simply reiterated the evidence by PW1 and PW2.

#### **Analysis and findings:**

9. The Plaintiff produced in evidence the Certificate of Title and the official search for subdivision number 1351 Section III Mainland North. The documents show the Plaintiff as the registered proprietor of Plot No.1351.

10. According to the report by the surveyor, PW 2, one of the Defendant's houses, which he has shown on his sketch plan, encroaches on MN/III/1351 by 66.5M<sup>2</sup> while the second house encroaches on the same plot by 23.4M<sup>2</sup>.

11. It was the evidence of PW 2 that the second house also encroaches on plot number MN/III/592 which is a road reserve leaving a very narrow footpath.

12. The evidence of PW1 and PW2 is not controverted.

13. On the basis of that evidence, I am satisfied that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have encroached on the Plaintiff's plot number 1351 and have also blocked the access road to the Plaintiff's plot. The Plaintiff has proved his case on a balance of probabilities.

14. In the circumstances, I allow the Plaintiff's Plaint dated 16<sup>th</sup> September 2013 as follows:

**(a) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to give vacant possession of plot number MN/III/1351 and MN/III/592 as per the surveyor's report dated 13<sup>th</sup> April 2010 and failure to do so the Defendants' houses to be demolished at their own cost by the Plaintiff.**

**(b) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to pay to the Plaintiff the costs of the suit.**

Dated and delivered in Malindi this 28<sup>th</sup> day of **November**, 2014.

**O. A. Angote**

**Judge**



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