



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 205 OF 2018**

**PRISCA FIKIRINI MWEZANI.....PLAINTIFF**

**VERSUS**

**THE LAND REGISTRAR KILIFI**

**THE ATTORNEY GENERAL.....DEFENDANTS**

**RULING**

1. By a Plaint dated 31<sup>st</sup> October 2018 and filed on 1<sup>st</sup> November 2018, Prisca Fikirini Mwanzani (the Plaintiff) prays for an order declaring her the rightful owner of LR No. Chembe/Kibabamshe/378 and a further order compelling the Land Registrar Kilifi County (the 1<sup>st</sup> Defendant) to issue title in her name. The Plaintiff prays for similar orders in a Notice of Motion subsequently filed herein dated 10<sup>th</sup> January 2019.

2. The Plaintiff's application is supported by an affidavit sworn by herself on the same date as the application and is premised on the grounds inter alia:-

**a. That the Plaintiff applied for the allocation of the said Parcel of land to herself in the year 2013;**

**b. That on 7<sup>th</sup> April 2008, the Plaintiff was issued with a Letter of Offer by the Commissioner of Lands which letter required her to pay the sum of Kshs 28,920/- within a period of three months;**

**c. That due to lack of finances, the Plaintiff could not pay within the three months and was only able to pay a sum of Kshs 50,000/- on 14<sup>th</sup> March 2016 which sum was inclusive of accrued interest;**

**d. That the Plaintiff then visited the 1<sup>st</sup> Defendant's office armed with a letter dated 30<sup>th</sup> June 2017 but the 1<sup>st</sup> Defendant declined to issue a title and instead requested for a Ground Report;**

**e. That when the 1<sup>st</sup> Defendant was granted a report prepared by the National Land Commission recommending the Plaintiff to be regularized and issued with a title deed, the 1<sup>st</sup> Defendant declined and instead asked the Plaintiff to get a decree from this Court.**

3. Upon being served with the Plaint, the 1<sup>st</sup> Defendant through the Honourable the Attorney General( the 2<sup>nd</sup> Defendant) took out a Notice of Preliminary Objection dated 10<sup>th</sup> December 2018 opposing the suit on the following grounds:-

**1. That Section 7 of the Land Act provides the methods of acquisition of title to land and the entire suit seeks to circumvent the elaborate procedures for acquisition of title to land through allocation and/or land adjudication process;**

**2. That due procedure has to be followed before issuance of a title deed and the forum(is) not proper as issues of allotment and settlement are within the mandate, discretion and consideration of the Director of Land Adjudication and Settlement; and**

**3. That the Plaintiff has no reasonable cause of action against the 1<sup>st</sup> Defendant and the suit filed against the Honourable Attorney General is premature and bad in law.**

4. When the Plaintiff's Notice of Motion application came up for hearing, directions were given that it be considered alongside the Preliminary Objection. Parties accordingly agreed to file submissions on both the objection and the application.
5. I have perused and considered the pleadings herein as filed as well as the Preliminary Objection raised by the Defendants. I have equally considered the Written Submissions as filed by the Learned Counsels for the parties.
6. The Plaintiff's claim against the Defendants is for an order declaring the Plaintiff the rightful owner of the suit property and a further order compelling the 1<sup>st</sup> Defendant to issue her with a title deed.
7. That claim arises from the Plaintiff's contention that she has at all material times been in possession of the suit property having been allocated the same on 7<sup>th</sup> April 2008. It is further the Plaintiff's case that on 24<sup>th</sup> December 2014, the National Land Commission conducted a ground verification exercise of the Chembe/Kibabamshe Settlement Scheme. Thereafter a public hearing was conducted by the Commission in September 2015 in regard to the complaints relating to parcels of land in the area. The Commission subsequently on 7<sup>th</sup> December 2017 directed that the land be regularized to the Plaintiff but the 1<sup>st</sup> Defendant has to-date refused to do so.
8. The 1<sup>st</sup> Defendant does not deny that it has failed to act on those recommendations. It is however its case that the elaborate procedure for acquisition of title as provided in law has not been complied with and hence it is unable to act on the Plaintiff's request.
9. From the material placed before me, it is apparent that the Plaintiff's beef with the Defendants arises from the failure of the 1<sup>st</sup> Defendant to enforce what the Plaintiff asserts to be a directive from the National Land Commission. The Commission's Letter dated 8<sup>th</sup> December 2017 attached to the Plaintiff's Supporting Affidavit reads at Paragraphs 5 to 8 as follows:-

**“The above property was originally adjudicated to John Njoroge Mutanga(deceased) and a title issued to him in 1978. He later surrendered (it) to the Government of Kenya. The property measures 3.8 Ha approximately.**

**Prisca Fikirini Mwendani lives on the land as a squatter.**

**During the reviews by the Commission, there was no other Claimant for the land.**

**The Commission regularizes the title to Prisca Fikirini Mwendani who lives on the land.**

10. As it were, while the Plaintiff asserts that she should be issued with a title deed in line with the recommendations of the Commission, it was not clear to me that the Commission had made that directive as all that the Commission said was that it had “regularized” the title to the Plaintiff.
11. There was nothing placed before me to show that an official request had been made to the 1<sup>st</sup> Defendant as it were to “regularize” the title as stated in the Commission's letter aforesaid. In the absence of any illegalities and/or any wrong doing attributed to the Defendants, it was clear to me that the Plaintiff's interest was in challenging any decision or administrative action relating to the matter after the Commission had given its decision.
12. Interestingly, a Copy of the Gazette Notice published by the Commission in the Kenya Gazette of 17<sup>th</sup> July 2017 annexed to the Plaintiff's affidavit reveals that as at the time of the determination, the Plot was registered in the name of one John Njoroge Mutunga and that one Edrick Mwanyonyo is the one who appeared before the Commission at the hearing. These two are not parties in the suit filed before me.
13. In the circumstances, I would agree with the Defendants that the suit as filed is premature as there is no proof of any prior request made to the Defendants to comply with. It was also clear to me that the complaint herein belongs in the realm of public administrative law and that the same can only be addressed if there is evidence of refusal to take action on the part of the Defendants, by way of judicial review.
14. Accordingly I uphold the Preliminary Objection and strike out both the suit and the application filed by the Plaintiffs.
15. I make no order as to costs.

**Dated, signed and delivered at Malindi this 30<sup>th</sup> day of January, 2020.**

**J.O. OLOLA**

**JUDGE**