



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT MOMBASA
CIVIL SUIT NO 108 OF 2019

EUNICE SIMON MBILU

MARIE KASYOKA MBILU.....PLAINTIFFS

VERSUS

ALI NASSOR

KILLIAN MWANDORI

RICHARD KISENGA

RAYMOND CHARO

PATRICK MWAROME

THE LAND REGISTRAR/COUNTY

LAND REGISTRAR, MOMBASA.....DEFENDANTS

RULING

(Application for injunction; plaintiffs displaying prima facie evidence of ownership of the suit land; respondents not filing anything to oppose the motion; application for injunction allowed)

1. This suit was commenced through a plaint which was filed on 18 June 2019. Together with the plaint, the plaintiffs filed an application for injunction seeking to restrain the defendants from trespassing, cutting down trees, occupying, living, developing, constructing, or in any other way interfering with the land parcel Title Number 628/I/MN (Original No.1110/9) situated in Kongowea, Maweni, Mombasa County, pending the hearing and determination of this suit. It is that application which is the subject of this ruling.

2. When the matter first came before court ex-parte on 18 June 2019, the court ordered that the defendants/respondents be served by way of advertisement and an appropriate advertisement was placed in the Daily Nation newspaper of 6 August 2019. So far, the respondents have not entered appearance and have not responded to the application for injunction.

3. The case of the plaintiffs is that the suit land was owned by the late Simon Mbilu, who died on 30 April 2017. It is averred that following his death, the respondents and other persons invaded the suit property and purported to subdivide it amongst themselves, and also cut down trees and vegetation on the suit property. It is mentioned that in order to sanitize their illegal activities, the respondents filed a suit, Mombasa ELC No. 28 of 2018, against the deceased, when he was already dead and managed to obtain an injunction. The said suit was later struck out as being incompetent for it was instituted against a person who was deceased. The applicants aver that unless the injunction is granted, the estate of the deceased will suffer loss for the suit land will be wasted.

4. As I mentioned earlier, there is no response to this application. The material that I have is therefore uncontroverted. The applicants have displayed copies of documents which show, prima facie, that the suit land was registered in the name of the deceased. The respondents have not justified their presence in the suit land and I am of the view that the applicants have therefore demonstrated a prima facie case with a probability of success. It is apparent that if an injunction is not granted, the respondents may proceed to waste the property and this may cause the applicants irreparable loss. Even if I was to consider the balance of convenience, it tilts towards maintaining and preserving the suit property.

5. I am thus persuaded to grant the order of injunction and I now make the following orders :

(i) That pending the hearing and determination of this suit, the defendants/respondents and/or their servants/agents, or any person claiming through them, and/or any other person who may be in possession of the suit land or who may take possession subsequently, are hereby ordered by an order of injunction, not to make any structure whether permanent , semi-permanent or temporary, and not to cut down any tree or any vegetation, and not to alter in any other way the character of the suit land.

(ii) The applicants will have the costs of this application.

6. Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 25TH DAY OF SEPTEMBER 2019.

MUNYAO SILA

JUDGE.

IN THE PRESENCE OF:

No appearance on the part of M/s E.K Mutua & Co. Advocates for the applicants

No appearance for the respondents.

Court Assistant; Mr. Koitamet.

MUNYAO S.

JUDGE.