



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 166 OF 2017**

**TSUWI MKARE TSUWI.....PLAINTIFF**

**VERSUS**

**ALEX NZARO CHAI.....DEFENDANT**

**RULING**

1. Before me for determination is the Notice of Motion dated 26<sup>th</sup> July 2017 and filed herein on 27<sup>th</sup> July 2017. By the said Motion, the Plaintiff makes the following prayer:-

***3. That this Honourable Court be pleased to issue a Conservatory Order/injunction against the titles number Kilifi/Kadzonzo/Madzimbani/13 and Kilifi/Kadzonzo/Madzimbani/14 and any subdivisions thereof restraining the defendant, his agents, employees or any other person claiming under him from dealing, developing, selling, fencing, or in any way interfering with the land pending the hearing and determination of the suit filed herein; and***

***4. That costs of this application be provided for.***

2. The said application is supported by an affidavit sworn by the Plaintiff Tsuwi Mkare Tsuwi and is based on the following grounds:-

***a) That the defendant has got himself registered as the proprietor of the land known as Kilifi/Kadzonzo/Madzimbani/13 and Kilifi/Kadizonzo/Madzimbani/14 through a flawed adjudication process to the exclusion of the Plaintiff and his family;***

***b) That the defendant is earnestly looking for buyers to buy the portion of the Plaintiff's land so as to make it impossible for the Plaintiff to claim the same;***

***c) That the Plaintiff and his family now run the risk of being made destitute if appropriate orders are not given; and***

***d) That the land in dispute is family land which the defendant has turned into his personal property to the prejudice of other family members including the Plaintiff.***

3. In a Replying Affidavit sworn in response to the application and filed herein on 20<sup>th</sup> September 2017, the Defendant Alex Nzaro Chai denies that he has converted the family land into his own personal property as stated by the Plaintiff. He further refutes the Plaintiff's claim that the two parcels of land were allocated to him through a flawed adjudication process and avers that the relevant provisions of law and procedure as laid down under the Land Adjudication Act were strictly adhered to.

4. The Defendant/Respondent further denies that the Plaintiff's father participated in the purchase of the suit premises to warrant an amendment to the current land records as sought by the Plaintiff and avers that if the Plaintiff's claim is based on a boundary dispute, the same cannot by dint of Section 18 of the Land Registration Act, 2012 be entertained by this Court.

5. I have considered the application and the response thereto. I have equally considered the Written Submissions filed herein by the Learned Counsels appearing for both parties as well as the Lists of Authorities the Counsels referred me to.

6. The basis of the Plaintiff's application is his contention that the Defendant got himself registered as the proprietor of the two parcels of land-Kilifi/Kadzonzo/Madzimbani/13 and Kilifi/Kadzonzo/Madzimbani/14 through a flawed adjudication process. It is his case that he has enough evidence to demonstrate that the land in question was bought by both his father and the Defendant's father but during the recently concluded adjudication process, only the defendant's name was captured in the land registry entries as the sole proprietor. He further avers that the Defendant never proved any of his allegations in regard to ownership of the land and accuses the adjudication officers of basing their

decision on unsubstantiated rumours and hearsay.

7. From the material placed before me, it is evident Kadzonzo/Madzimbani was declared an adjudication area pursuant to the provisions of Section 5 of the Land Adjudication Act, Cap 284 Laws of Kenya sometime in or about 2007. Following the completion of the adjudication process, the Defendant was awarded the two parcels of land which award the Plaintiff objected to. The Plaintiff's first objection was lodged with the Land Adjudication Officer who dismissed it. The Plaintiff then preferred an appeal to the Minister against the dismissal of his objection.

8. Section 26 of the Land Adjudication Act provides that:-

***“26 (1) Any person, named in or affected by the adjudication register who considers it to be incorrect or incompetent in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing saying in what respect he considers the adjudication register to be incorrect or incomplete.***

***(2) The adjudication officer shall consider any objection made to him under subsection (1) of this Section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.***

9. From the material placed before me, it is evident that the Plaintiff Tsuwi Mkare Tsuwi lodged such an objection with the Land Adjudication Officer. While it is not clear on which date it was lodged, the documents annexed to both the Plaintiff's and the Defendant's Affidavit show that the objection came up for hearing on 25<sup>th</sup> August 2011. On that date, the Adjudication Officer captured the Plaintiff's Statement before cross-examination by the Respondent Alex Nzaro Chai as follows:-

**PLAINTIFF'S STATEMENT**

***A male adult of sound mind duly sworn in states that I filed this objection because the portion I am claiming was ours but was recorded in the names of the respondent and I wish this Court to carve out the portion measuring approximately 2.5 acres and a new number be issued and the same be recorded in the names of Ernest Nzaro Mkare and Tsuwi Mkare Tsuwi. That is all.”***

10. Having heard the Objection and the response thereto, the Adjudication Officer dismissed the same on 7<sup>th</sup> January 2012 as follows:-

**“DECISION**

***The Objection is dismissed. The respondent to remain recorded to the Plot and 60 days granted to any party aggrieved by the stated decision from the date of this Order.”***

11. Under Section 26A of the Act, the Land Adjudication Officer is required to forward to the Director of Land Adjudication a final adjudication register in regard to all parcels that have no objection for transmission to the Chief Land Registrar for purposes of registration. Under Section 27 of the Act, the Adjudication Officer is mandated to alter the adjudication register from time to time to conform with any determinations of objections such as the one made by the Plaintiff under Section 26 of the Act. The Director of Land Adjudication is then required to forward the adjudication register together with a list of appeals lodged under Section 29 of the Act to the Chief Land Registrar.

12. Section 28 of the Act empowers the Chief Land Registrar to give effect to the adjudication register through registration whereupon individual titles are issued in terms thereof save in respect to parcels of land in regard to which an appeal has been preferred to the Minister, in which case, a restriction is required to be placed on the parcel. The said Section provides thus:-

***“28. Upon receiving the adjudication register under Section 27 of the Act, the Chief Land Registrar shall cause registration to be effected in accordance with the adjudication register.***

***Provided that, where the land is affected by an appeal under Section 29 of this Act, a restriction shall be made and registered in respect of that land expressed to endure until the determination of the appeal, and on such determination the register shall if necessary be altered in accordance with the determination.”***

13. In the matter before me, the Plaintiff lodged a detailed Appeal to the Minister dated 28<sup>th</sup> February 2012 in which he sought to have the decision of 7<sup>th</sup> January 2012 quashed, set aside and/or vacated and that he be given back two and a half acres of the Portion of land known as Kadzonzo/Madzimbani/14.

14. In the meantime, in light of Section 28 of the Land Adjudication Act, the Chief Land Registrar proceeded on 8<sup>th</sup> August 2013 to issue a Title Deed in the name of the Defendant/Respondent but by a restriction placed on the same date, restricted any dealings therewith until the Appeal to the Minister was finalized.”

15. On 25<sup>th</sup> April 2017, the Ministerial Panel dismissed the Appeal and ordered that the parcel of land should remain registered in the name of the Defendant/Respondent. From the proceedings of the hearing before the Minister annexed to the Defendant's Replying Affidavit, it is evident that both the Plaintiff and the Defendant together with their witnesses participated in the process. The Minister then determined that the land in dispute belonged to the Defendant/Respondent herein.

16. As it were, the adjudication process as provided under the Land Adjudication Act terminates with the Minister whose decision is final. The adjudication process provided determines and settles all claims and interests of persons affected in regard to land that has been subjected

to adjudication. It is that process which awarded the suit land to the Defendant and from the material placed before me, both the Plaintiff and the Defendant participated in the proceedings.

17. Arising from the foregoing, I do not think the Plaintiff can re-open his objection to the adjudication in the manner he has done herein. The upshot is that I do not find merit in the Plaintiff's application dated 27<sup>th</sup> July 2017. The same is dismissed with costs to the Defendant.

18. Arising from the foregoing, I did not find merit in the Plaintiffs application dated 10<sup>th</sup> May 2017. The same is dismissed with costs to the Defendants/Respondents.

**Dated, signed and delivered at Malindi this 21<sup>st</sup> day of September, 2018.**

**J.O. OLOLA**

**JUDGE**