



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
CIVIL SUIT NO. 263 OF 2015

AINUSHAMSI MULTIPLE A. LIMITED.....PLAINTIFF

-VERSUS-

HAKIKA TRANSPORT SERVICES LIMITED.....1ST DEFENDANT

JAMAL ABEID KHAMIS.....2ND DEFENDANT

ABDULHAKIM ABEID KHAMIS.....3RD DEFENDANT

MOHAMED ABEID KHAMIS.....4TH DEFENDANT

RULING

1. There are two applications pending in this matter. The 1st one was filed by the plaintiff and is dated 9th October 2015 against the 1st defendant Hakika Transport Services Limited. The 2nd application is filed by the 2nd – 4th defendants and is dated 25th November 2015. The orders sought in the second application are directed against the plaintiff. Both applications are brought under the provisions of Order 40 of the Civil Procedure Rules and Section 1A, 1B and 3A of the Civil Procedure Act. They are both seeking interim orders of injunction pending determination of this suit.

2. The applications are opposed by the respective parties. Both advocates agreed to argue the application by filing of written submissions. The plaintiff filed her submissions in respect of both applications while the defendants only filed written submissions in respect to their application dated 25.11.2015. I will however proceed to determine both applications together as they are related.

3. The plaintiff pleaded that he owns land parcel No 28815. He wants an order restraining the 1st defendant, her agents or servants from entering, constructing on or removing any of her property from the suit land pending determination of this suit. In support of her claim, the plaintiff annexed a copy of a title deed to show they are the owners. The plaintiff also annexed a copy of postal search showing she is the registered owner of L.R No 28815 measuring 3.495 ha/acres in Mariakani Kilifi district.

4. The 1st defendant in response to the application alleged that the title annexed by the plaintiff is fake on the basis of a letter written by the National Land Commission dated 29th September 2015. The 1st defendant denied the possession of the suit property by the plaintiff. He also said that the suit property is the subject of litigation in MSA ELC No 139 of 2014 and Malindi HCC 93 of 2014 (which suits have been consolidated). The two cases are in respect of the land title No Kilifi/Kawala 'A' Kadzonzo/32.

5. The 2nd – 4th defendants are laying claim to the title Kilifi/Kawala A/Kadzongo/32 and have annexed a copy of Certificate of Official search to show they are the registered owners of this second title. According to the 2nd – 4th defendants, the land being claimed by the plaintiff is their plot referred to as Kilifi/Kawala A/Kadzongo/32 which they acquired in 2013 and have been in possession of.

6. From the pleadings, it appears that the parties herein may be claiming the same plot which have been given separate title deeds under the then different legal regimes of the land law i.e the plaintiff's title is issued under the Registration of Titles Act (repealed) while the 2nd – 4th Defendants title is issued under the Registered Land Act (repealed).

7. For this Court to determine the true position i.e whether the two titles are referring to the same parcel of land, it is necessary that subject of the dispute be preserved. I cannot say in the circumstances of this case and at an interlocutory stage who has met the principles for granting orders of temporary injunctions because the parties have each exhibited their titles.

8. The orders commending themselves to be issued is that the status quo be maintained until the Land Registrar Kilifi will have identified the two plots and filed his report. Therefore both the plaintiff and defendants shall not in any way carry out any activities on the Land parcel whether described as L.R No 28815 or Kilifi/Kawala A/Kadzongo/32 until further Orders of this Court.

9. To get a way forward the matter is to take for us hearing and determination this Court hereby exercises its discretion under section 3A of the Civil Procedure Act and

i) Issue an order directed at the District (County) Land Registrar Kilifi together with the District (County) Surveyor Kilifi land registry to visit the two parcels of land L R No 28815 and Kilifi/Kawala A/Kadzongo/32 for purposes of determining whether the two titles refer to the same parcel of land on the ground or otherwise.

ii) The said visit be made in the presence of the parties herein.

iii) The District (County) Land Registrar to file his report within 30 days of being serve with this order.

iv) The parties' advocates to extract the order and serve on the District (County) Land Registrar for compliance.

v) This matter be mentioned on 2nd December 2016 to confirm if the report is ready and for further orders.

Ruling Signed and delivered at Mombasa this 12th day of October 2016.

A. OMOLLO

JUDGE