



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT
AT MALINDI
LAND CASE NO. 189 OF 2013

WILLIAM RUWA GONA.....PLAINTIFF/APPLICANT

=VERSUS=

1. JAMAL HAFIDH MOHAMED

2. ALI AHMED ALI.....DEFENDANTS/RESPONDENTS

R U L I N G

Introduction

1. What is before me is the Plaintiff's Notice of Motion dated 28th October 2013 seeking for the following reliefs:

(a) That there be issued an order of interim injunction restraining the Defendant either by himself and/or assigns, agents, employees and successors in title from interfering with the quit possession and occupation of that parcel of land known as plot number 102/1 (original 102) Maziwani Malindi. Measuring approximately eleven acres.

(b) Cost of the Application be provided for.

2. The Application is supported by the Plaintiff's affidavit.

The Plaintiff's/Applicant's case:

3. According to the Plaintiff's supporting affidavit, the 1st Defendant is the attorney of the 2nd Defendant duly authorised to sell land known as plot number 102/1 (original 102) Maziwani Malindi; that on or about 13th November 2008, the 1st Defendant and the Plaintiff entered into an agreement of sale of the suit property whereupon he paid Kshs.770,000 as deposit. The purchase price was Kshs.1,540,000.

4. Although the Plaintiff was supposed to pay the balance of the purchase price after the vendor hands over duly executed completion documents, he paid the balance of the purchase price before the documents were handed over to him.

5. It is his deposition that the Defendants are now threatening to evict him from the suit property.

The Respondents' case

6. The 1st Respondent filed a Replying Affidavit on 21st November 2013 and conceded that he was the 2nd Respondent's attorney. The 1st Respondent further conceded that he entered into a sale agreement on 13th November 2008 with the Plaintiff for the sale of the suit property at a price of Kshs.1,540,000. However, the deposit that was paid was Kshs.715,000 and not 770,000 as alleged by the Plaintiff.

7. It is the 1st Respondent's deposition that the sale agreement annexed on the Plaintiff's Application is forged because the first page was changed/amended and a sum of Kshs.770,000 inserted instead of Kshs.715,000; that the balance of the purchase price was to be paid within two months from the date of execution and further that the Plaintiff was to bear the costs of the sub-division.

8. However, the Plaintiff only paid Kshs.630,000 and 140,000 after the money was demanded from him leaving a balance of Kshs.55,000/- which has remained unpaid to date.

9. The 1st Respondent finally deponed that he handed the Plaintiff vacant possession of the suit property who took possession and erected a building thereon; that he has no intention of evicting the Plaintiff other than claiming the Kshs.55,000/- being the balance of the purchase price.

Analysis and findings

10. It is not in dispute that the Plaintiff and the 1st Respondent entered into an agreement of sale in respect to the suit property. It is also not in dispute that the 1st Respondent handed to the Plaintiff vacant possession of the suit property.

11. The dispute, as I can see from the affidavits, pertains to the sum of Kshs.55,000 which the 1st Respondent claims is the balance of the purchase price.

12. In view of the fact that the 1st Respondent is alleging that the first page of the agreement of sale was changed to show the paid deposit as kshs.770,000 instead of Kshs.715,000 and the allegations of fraud, which allegation has not been proved by way of any documentary evidence, that issue can only be determined at trial.

13. Indeed the 1st Respondent has conceded to the Application by deponing that he has no intention of evicting the Plaintiff from the suit property. All he wants is the balance of the purchase price of Kshs.55,000 which has been disputed by the Plaintiff.

14. Although the Defendants' counsel has raised in his submissions the issue as to whether there is a valid sale agreement in the absence of the consent of the Land Control Board, that issue was not raised in the Respondent's Replying Affidavit. The Plaintiff did not have a chance to respond to it. I will therefore not address my mind on it at this stage.

15. In the circumstance, I find that the Plaintiff has established a prima facie case with chances of success. I also find that unless the court grants to the Applicant the order of injunction, the Plaintiff is likely to suffer irreparable damages considering that he is in possession of the land and he has already constructed his house on the suit property. The balance of convenience also tilts in his favour.

16. For the reasons I have given above, I allow the Plaintiff's Application dated 28th October 2013 as prayed.

Dated and delivered in Malindi this 21st day of March, 2014.

O. A. Angote

Judge