



COPY

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC NO. 239 OF 2013

JAPHET MWAKALA PLAINTIFF

- VERSUS-

1. LINDA WAVINYA KILONZO

2. HASSAN HURI

3. ABDULRAZAK HURI IBRAHIM

4. CHIEF LAND REGISTRAR DEFENDANTS

RULING

[1] The applicant herein applies to court for an order restraining the 3rd defendant by himself, agents, servants or anybody claiming under him from selling disposing of, transferring, constructing or otherwise dealing with LR. NO. 1956/348 Voi pending the hearing of the suit filed herein.

He supports his application by his affidavit sworn on 28th October, 2013. He depones that he was allotted the said land on 6th November, 1998 by the Commissioner of Lands whereupon he subsequently paid Kshs. 12615 as standard premium and other charges pursuant to the letter of allotment. He states that after such payment he left the land office to do the paper work and was entitled to legitimately expect the documents of title to be issued in his name.

[2] That in July 2003 he discovered through his wife that the land was allotted to someone else the first respondent. The first respondent thereafter transferred the same to the 2nd respondent who subsequently transferred it to the third respondent who is currently the registered proprietor.

He avers that the allocation to the second defendant was made on 7th October, 2000 two (2) years after he had been allotted the same piece of land. He avers that such allocation of the same land, the same reference number was illegal null and void and unlawful since no such plot was available for allocation by the Commissioner of Lands to the 1st respondent. He avers that he has several documents to prove that the allocation to the second defendant was irregular and unlawful

[3] The second defendant swore an affidavit on 2nd December, 2013. In that affidavit he stated that the title of the 3rd defendant is genuine. He stated that the letter of offer of the applicant is not genuine, he stated that the question of ownership of this property was considered in **Mombasa HCCC. NO. 384 of 2009 Hasssan Huri vs Venance Mwashigandi & Jasper Mwasheha** and that the court found in his favour. There was no replying affidavit from the 1st , 3rd and 4th respondents.

[4] The applicant in this case challenges the allocation of this land by the Commissioner of Lands to the 1st respondent. His argument is that there was no land available for allocation to the first respondent when the Commissioner of Lands proposed to issue another letter of allotment to the first respondent. This issue goes to the root of this case. A determination of that point determines the suit in my view. Evidence on this issue shall with no doubt be canvassed at the trial. I have perused the ***Mombasa High Court Civil Case No. 384 of 2009***. The applicant was not a party. Infact it was the second defendant who had filed the case against two other people also not parties to this suit asking the court to evict them from the suit premises. He claimed that the land was his.

[5] The issue between the parties herein has not yet been determined. I am convinced from the documents placed before me by the applicant that the balance of convenience favours the applicant. I grant him the orders he has applied with costs.

Dated and delivered in open court at Mombasa this 20th day of June, 2014.

S. MUKUNYA

JUDGE

20.6.2014

In the presence of:

Mwanakitina Advocae for Mwakisha Advocate for the plaintiff

Wachira advocate for Oduol Advocate for the respondent.