



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. E036 OF 2021

ALAMIN SHEIKH AHMED.....PLAINTIFF

VS

REGISTRAR OF LANDS KILIFI COUNTY.....DEFENDANT

RULING

This ruling is in respect of a Notice of Motion dated 15<sup>th</sup> April 2021 by the Plaintiff/Applicant seeking the following orders: -

a) *Spent*

b) *That pending the hearing and disposal of this application, the Defendant by themselves, their servants and or agents or otherwise howsoever be restrained by a temporary injunction from charging, leasing, selling, transferring or in any way whatsoever and howsoever dealing with the parcels of land known as Plot Nos. 5596 and 5597 Malindi.*

c) *That pending the hearing and disposal of this suit, the Defendant by themselves, their servants and or agents or otherwise howsoever be restrained by a temporary injunction from charging, leasing, selling, transferring or in any other way or manner whatsoever and howsoever interfering with the parcels of land known as Plot Number No. 5596 and 5597 Malindi.*

d) *That cost of this application be provided for.*

Counsel agreed to canvas the application vide written submissions which were duly filed

Counsel relied on the grounds on the face of the application together with the Supporting Affidavit by the Applicant Alamin Sheikh Ahmed where he averred that he was the beneficiary and heir of the registered parcels of land Plot Number 1731 Malindi and the individuals whose names appeared in the two title deeds are relatives by virtue of being siblings and or children of the late Sheikh Ahmed Bin Dahman who was the registered owner of all that parcel of land known as Plot No. 1731 Malindi.

The Applicant deponed that the Defendant in collusion with some few corrupt officers from the land offices Mombasa did transfer the title from original owner Late Sheikh Ahmed Bin Dahman with the names of the two elder brothers. That the registration of Plot Nos 5596 and 5597 Malindi in the names of **SHEIKH ALI BIN DAHMAN & MOHAMED AHMED DAHMAN** was obtained through fraud and misrepresentation of material facts hence a temporary injunction should issue.

#### **DEFENDANT'S RESPONSE**

Counsel for the Defendant in response filed Grounds of Opposition dated 12<sup>th</sup> July, 2021. Where Ms. Munyuny submitted that the application for injunction against the Government is in contravention of Section 16 of the Government Proceedings Act which expressly precludes the grant of injunction against government officers. That the Applicant has not met the threshold for grant of an injunction and the Plaintiff has not equally established the requisite locus standi and or authority to institute the suit.

Counsel submitted that the suit properties are registered in the names of different persons who have not been named as parties to the suit hence the pleadings as drawn are fatally and incurably defective. Counsel therefore urged the court to dismiss the application with costs.

#### **ANALYSIS AND DETERMINATION.**

This matter came up for hearing of this application under certificate of urgency on 4<sup>th</sup> May 2021 when the court noted that the orders sought

were for injunction to restrain the Defendant from selling, charging or fraudulently transferring the suit land pending the hearing of this application inter partes.

The court further observed that the only Defendant listed is the Land Registrar Kilifi County against the orders sought cannot apply. The court therefore declined to issue any orders of injunction and urged the Applicant to take a date in the registry and serve.

From the order, counsel for the Applicant should have taken a cue and either included the relevant parties to whom the complaint is geared towards and amended the plaint or withdrew the application as drafted.

In effect the Applicant wants the court to issue orders in vain against parties that are not joined in the suit. Further Section 16 of the Government Proceedings Act provides for the nature of relief against the Government, and forbids the Court from issuing injunctive orders against the Government. The section reads as follows: -

***(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.***

Having said so I will not delve into the issues whether the Plaintiff/Applicant has met the threshold for grant of injunctions or not. I find that the application as drafted lacks merit and is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 9<sup>TH</sup> DAY OF MARCH, 2022.**

**M.A. ODENY**

**JUDGE**

***NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.***