



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
ENVIRONMENT AND LAND COURT
CIVIL CASE NO. 8 OF 2012

KUTA KIRINGI LUNGANZI

DERI KIRINGI LUNGANZI.....PLAINTIFFS

=VERSUS=

1.PANDE MKAUMA PANDE

2. KANTI JETTA RAMJI.....DEFENDANTS

R U L I N G

1. Before me is the Plaintiff's Application dated 31st January, 2012 and filed on the same day. In the Application, the Plaintiff/Applicant is seeking for the following substantive orders;
 - a. **THAT this Honourable court be pleased to issue a temporary injunction to restrain the Respondents by themselves, their agents, servants and/or their representatives from interfering, trespassing, dealing, selling, leasing and/or in any other manner dealing with Plot No. Mwapula/Magogoni/202 pending the hearing and determination of this application.**
 - b. **THAT the costs of this application be provided for.**
2. The Application is supported by the Affidavit of the 1st Plaintiff and by the grounds which are on the face of the Application.

The Applicant's case

3. The 1st Applicant has deponed in his affidavit that he, together with the 2nd Plaintiff are the legal representatives of Kiringi Lung'anzi Sharifu who was the sole proprietor of Plot number Mwapula/Magogoni/202 (the suit property).
4. The 1st Applicant has further stated in his affidavit that on 17th December 2008, the Kilifi Land Adjudication Appeals Tribunal delivered an award in which it decided that the suit property should be sub-divided into two portions. One of the portion of the land was to be allocated to Pande Mkauma Pande, the 1st Defendant, and the other portion was to be allocated to Kiringi Lung'anzi Sharifu, the Plaintiffs' late father; that the 1st Defendant sold the portion allocated to him to the 2nd Defendant which was contrary to the express orders of the award and the 2nd

Defendant has now started trespassing and dealing with the suit property.

5. It is the 1st Applicant's deposition that being dissatisfied by the award of the Appeal's Tribunal him, together with his co-administrator of the estate of their late father have filed this suit for determination of the issue of ownership of the suit property; that the suit property has had a long history dating back to 1986 when the Respondent herein filed a case before the chief, Jaribuni Location and a decision was granted in favour of the deceased's' father, one Mugamba Deri.
6. The 1st Defendant herein was not satisfied with the decision of the chief and he appealed to the area Division Officer, Ganze, who made a decision in favour of the 1st Defendant. This decision was adopted by the Principal Magistrate in 1988 which lead to the filing of High court Civil Appeal Number 59 of 1988 by the Applicant's father.
7. The 1st Applicant has deponed that the High Court set aside the decision of the Principal Magistrate but in the meantime, adjudication and land demarcation process commenced in Mwapula/Magogoni area and the suit property was allocated to the Applicants' father during the adjudication.
8. However, the 1st Defendant appealed against the decision to allocate the land to the Appellants' father. The appeal was heard by the Adjudication Committee which delivered its decision in favour of the Applicants' father; that the 1st Defendant filed another appeal with the Arbitration Board and this time around the Board delivered a decision in favour of the 1st Defendant.
9. The 1st Applicant has further deponed that their father filed an objection at the District Land Adjudication office, Kilifi District which made its decision in favour of the 1st Defendant. The Applicants' father pursued the issue further and filed an appeal with the Minister in 2008 who ordered that the suit property should be sub-divided into two equal portions, one to remain with the 1st Defendant and the other one to be given to the Applicants' father.
10. The 1st Applicant has finally deponed that the Director of Land Adjudication and Settlement has issued a certificate confirming that the register for adjudication area Mwapula/Magogoni has become final thus the filing of this suit; that the 1st Defendant has sold the suit property to the 2nd Defendant who is busy excavating stones and that the said excavation shall have irreversible effects on the suit property.
11. The 2nd Defendant filed his grounds of opposition and Notice of Preliminary Objection and a Replying Affidavit on 9th March, 2012.
12. The 1st Defendant filled his Grounds of Oppositions on 20th March, 2012 and stated that the Application is fatally defective and an abuse of the due process of court; that the time within which an appeal from the Minister's decision pursuant to section 29(1) of the Land Adjudication Act Cap 284 lapsed a long time ago and that the Plaintiffs have not demonstrated the existence of a prima facie case to warrant the granting of the orders sought.
13. The 2nd Defendant on his part deponed that this court cannot grant the orders sought in the Application because it has no jurisdiction known in law.
14. The 2nd Defendant deponed that he purchased a portion of the suit property measuring ten (10) acres from the 1st Defendant for Kshs.1 , 650,000; that according to the Minister, it is the 1st Defendant who was to retain the old number, that is 202; that the decision of the Minister is final and no appeal lies in law and that such a decision can only be challenged by way of Judicial Review.

15. The parties agreed to dispose of the Application by way of written submissions. The Applicants' advocate filed her written submissions on 14th March 2013 while the 2nd Defendant's advocate filed his submissions on 2nd May, 2013. The 1st Defendant did not file his submissions. I have considered the filed written submissions.
16. My task at this stage is to determine whether on the material placed before me, the Applicant has established a prima facie case with a probability of success to warrant the grant of a temporary injunction pending the hearing and determination of the main suit. I will also determine whether, even if such a case exists, the Applicant has shown that he will suffer loss that is incapable of compensation by an award of damages. If in doubt about the two, I will determine the application on a balance of convenience.
17. The 2nd Respondent filed a Notice of Preliminary Objection on 9th March 2012 on the ground that this court lacks jurisdiction to hear and determine the Application.
18. The Notice of Preliminary Objection was heard by Honorable Lady Justice Meoli and a Ruling was delivered on 2nd July, 2012. In the said Ruling, the Judge dismissed the Preliminary Objection. I will therefore not delve into the issue of whether this court has jurisdiction to entertain this claim or not in view of the said Ruling and also considering the fact that the 2nd Defendant has filed an appeal challenging the decision of Justice Meoli.
19. It is not in dispute that after a series of the Tribunals' decisions in respect to the suit property, the Minister of Lands, through his representative ordered that the suit property should be divided into two equal portions. According to the decision of the Minister, the Plaintiff herein was to be issued with a new number while the Defendant was to retain the old number. The Plaintiff now claims that the 1st Defendant did not have any adjudicable interests in the suit property.
20. None of the parties has title documents to the suit property. Indeed, both the Plaintiffs and the Defendants have been relying on the evidence of the witnesses in the Tribunals to lay claim on the parcel of land.
21. However, it appears that before the 1st Defendant could get the title documents and even before the Minister's decision that they should share the land in half, he sold what he considered to be his portion of land to the 2nd Defendant.
22. According to the Sale Agreement between the 1st Defendant and the 2nd Defendant dated 28th October 2008, the 1st Defendant sold to the 2nd Defendant "a portion measuring 10 acres at Kshs.1,650,000/-".
23. It is not clear from the said Sale agreement the portion that the 1st Defendant was selling to the 2nd Defendant and how the measurements were done so as to accord with the decision of the Minister.
24. According to the provisions of Section 29 of the Land Adjudication Act, Cap 284, the Minister's decision is supposed to be sent to the Director of Land Adjudication and to the Chief Registrar who shall alter the duplicate adjudication register to conform with his determination. The Chief Land Registrar thereafter alters the adjudication register accordingly.
25. There is no indication by the Respondents that the Chief Registrar caused registration to be effected in accordance with the adjudication register after the Minister's decision of 17th December 2008.
26. It would appear that even before the Minister's representative made his decision on 17th December 2008 and before the register could be rectified to indicate the decision of the Minister, the 1st Respondent had already sold the land to the 2nd Respondent. The 2nd Respondent can therefore not rely on the decision of the Minister to lay proprietorship rights over the suit property considering that he bought it before the said decision was made and before the land could be sub-

divided in accordance with the said decision. On this limb alone, and considering that the issue of the jurisdiction of this court ought to be ventilated at the trial as ordered by Hon. Justice Meoli, I find and hold that the Plaintiff has established a prima facie case which chances of success.

27. On the issue of whether the Applicants will suffer irreparable damage unless the injunctive orders are granted, I am satisfied that they will. This is informed by the 2nd Respondent's own admission that he has invested in the business of a quarry on the suit property. It is common knowledge that quarrying wastes land and there will be no commodity known as land after the quarrying activities by the 2nd Respondent. The Plaintiffs will therefore not be able to recover any land in the event they succeed in their claim.

28. Having held that the Plaintiffs have a prima facie case with chances of success and that they will suffer irreparable damages which cannot be compensated by way of damages, I am not required to consider in whose favour the balance of convenience tilts. I therefore allow the Plaintiff's Application dated 31st January, 2012 as prayed.

Dated and Delivered in Malindi this 20th day of June, 2013

O. A. Angote

JUDGE