



COPY

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 33 OF 2013

JOHN ROBERT QUINCE

JABU KATANA

CHRISTINE ANN MAHONEY being officials of

BECKEN CHARITY PROJECT.....PLAINTIFFS/APPLICANTS

- V E R S U S -

SUDI ALI MWAROPIA DEFENDANT/RESPONDENT

RULING

[1] The applicant brings this application praying for status quo pending the hearing of the main suit to restrain the defendant by himself, his servants, employees and agents from entering upon, interfering with and/or having dealings of adverse nature with the piece of land situated in Ukunda Township known as **Plot No. Kwale/Ukunda/4546**. The application was supported by the affidavit of Jabu Katana who swore an affidavit on 11th February, 2013 and avered that he is the Treasurer of BECKEN CHARITY PROJECT a self help charitable group registered under the former Ministry of Gender, Children and Social Development. He avered that the said Charity Project is the registered owner of **Plot No. Kwale Ukunda/4546**. He annexed the sale documents therein. He avered that the said Charity Project is the registered owner of Plot No. Kwale Ukunda/4546. He annexed the sale documents therein. He avered that they were duly registered on 3rd October 2011. The said project took over and started to sink a borehole and construction of classrooms on the suit property.

He avers that the defendant came and purported to stop them from the developments and claimed ownership. He started filling up the bore hole with soil and went on a tree cutting spree on the suit premises prompting the applicant to bring this suit and application.

[2] The respondent on his part alleged the suit property was his and that he obtained Title Deed in 2005 as a result of a suit in the Msabweni Land Dispute Tribunal case No. 16 of 2003. He states that he was declared the owner of Plot No. KWALE/UKUNDA/1916. That land is now illegally subdivided into parcels 4546 and 4547 he annexed copies of the proceedings and judgment of that case. He avered that the applicants application and indeed the suit was devoid of merit, is scandalous, vexatious and an abuse of the process of the court.

[3] There is no doubt that land parcel Kwale/Ukunda 1916 was subdivided to produce land parcels Kwale/Ukunda 4546 and 4547. There is also no doubt that the mother title Kwale/Ukunda/1916 has two titles. One in the names of Hassan Hassan Debe, Swaleh Omari Madonga, Musa Saidi Mwanaharusi, Ali Omari Mwasamuli, Fatuma Madonga and the other in the name of the defendant herein Sudi Ali Mwaropia. Evidence will have to be adduced as to which of the two titles is genuine and which registered proprietors is (or was) genuine.

The applicants claim that land parcel Kwale/Ukunda/1916 was subdivided after the necessary subdivision and land control consent was obtained, and new titles issued as 4546 and 4547 and the original 1916 ceased to exist. But did it cease to exist? All these are issues that have to be canvassed at the hearing. The applicants are in a portion of what was Kwale/Ukunda/1916 i.e Kwale/Ukunda/4546 and have effected developments thereon. The Court is not informed who is on the other portion now known as Kwale/Ukunda/4547 or what is its fate.

The only reasonable thing under the circumstances is to have status quo maintained pending the hearing of this suit.

This Court therefore grants the applicant prayers 2,3 and 4 of his application. The Court further orders that status quo be maintained pending the hearing of this suit.

The cost of this application shall be in the suit.

Dated and delivered at Mombasa in open Court this 18th day of October, 2013.

S.N. MUKUNYA

JUDGE

18.10.2013

In the presence of:

Khatib Advocate for the plaintiffs/applicants

Koech Advocate for L. Mbatia Advocate for the defendant/respondent