



**Mohsin v Beautu & another (Environment & Land Case
77 of 2019) [2022] KEELC 129 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 129 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 77 OF 2019**

JO OLOLA, J

MAY 12, 2022

BETWEEN

ABDULRASUL SALEH MOHSIN PLAINTIFF

AND

NDUME BENDERA BEAUTU 1ST DEFENDANT

DAMA CHONGO 2ND DEFENDANT

RULING

1. By the Notice of Motion dated 20th September, 2019 as filed herein on 24th September 2019, Abdulrasul Saleh Mohsin (the Plaintiff) prays for orders:
 - (2) That this Court do issue eviction orders against the Defendants/Respondents being that they are trespassing on the Plaintiff/Applicant's land;
 - (3) Spent.
 - (4) The Court be pleased to grant an injunction restraining the Respondents whether by themselves their agents and/or servants from trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the Plaintiff's property being Plot No. LR No. MN/III/3927 pending the hearing and determination of this suit;
 - (5) The Officer Commanding Kilifi Police Station do enforce compliance of the orders above;
 - (6) The costs of this application be provided for; and
 - (7) The Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. The application is supported by an affidavit sworn by the Plaintiff and is premised on the grounds:



- (i) That the Plaintiff is the legal owner of the said parcel of land known as Plot No. LR No. MN/III/3927;
 - (ii) That the Respondents have interfered with the Plaintiff's said property by trespassing thereupon and constructing temporary and permanent structures; and
 - (iii) That unless restrained the Respondents will continue to trespass, interfere and erect permanent structures on the Plaintiff's aforesaid property thereby causing the Plaintiff irreparable damage with the likelihood of a breach of the peace.
3. Dama Chongo (the 2nd Defendant) is opposed to the grant of the orders sought. In a Replying Affidavit sworn and filed herein on 5th December, 2019 she avers that it is true the Defendant was allotted Plot No. LR MN/III/3927 where they reside after he applied for the same without disclosing that it was the Defendants who are physically on the land.
 4. The 2nd Defendant further avers that she has been residing on the said parcel of land ever since she was born and that her father and grandfather were also residing on the land before the allotment took place. She accuses the Plaintiff of deliberately applying for allotment of their land when he knew or ought to have known that the Defendants were residing thereon.
 5. The 2nd Defendant further avers that the Government cannot allot land to anyone unless one is in actual occupation. The 2nd Defendant is then convinced that the Plaintiff did not disclose that fact to the Government at the time he applied for the allotment or got the approval.
 6. I have carefully perused and considered the application and the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates for the Plaintiff. The Defendants did not file any submissions.
 7. The Plaintiff herein prays for an order of eviction to issue against the two Defendants herein. He also wants the Defendants restrained by an order of injunction from trespassing on, wasting, alienating or dealing in any manner whatsoever with the suit property.
 8. In support of his application, the Plaintiff has annexed to his supporting affidavit a letter of allotment as well as a copy of the Certificate of Grant issued to him together with Certificate of Postal Search dated 21st August, 2019 and showing that the property is indeed registered in his name.
 9. In opposing the application, the Defendants do not deny that the property is registered in the Plaintiff's name. It is however their case that they have lived on the land from time immemorial and that the Plaintiff applied for allotment of the land while fully aware that the Defendants were in physical occupation thereof.
 10. As it were, Section 24 of the *Land Registration Act* No. 3 of 2012 provides as follows:

“The registration of a person as the proprietor of land shall vest in that person the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto.”
 11. At the same time, Section 26 of the same Act exhorts this Court to take cognizance of such registration as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute indefeasible owner,



subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except –

- (a) On grounds of fraud, or misrepresentation to which the person is proved to be a party; or
- (b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

12. In the matter before me, the Defendants have not demonstrated by evidence or otherwise that the Plaintiff's title was obtained in the circumstances prohibited under sub-paragraphs (a) and (b) of Section 26 above. It follows therefore that the Plaintiff remains the absolute proprietor of the suit property entitled to protection of his title as provided under the Land Registration Act.
13. That being the case and the Defendants having admitted that they have occupied the suit property, I am persuaded that there is merit in the Motion dated 20th September, 2019. I allow the same in terms of Prayers 2 and 4 thereof.
14. The Defendants have 30 days from today to remove their structures from the suit property and to grant vacant possession.
15. The Plaintiff shall have the costs of the application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYERI VIA MICROSOFT TEAMS THIS 12TH DAY OF MAY, 2022.

In the presence of:

No appearance for the Plaintiff

No appearance for the Defendants

Court assistant Kendi

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J. O. OLOLA

JUDGE

