



**Rassam & 4 others v Kazungu & 6 others (Civil Suit
31 of 2021) [2022] KEELC 3671 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3671 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL SUIT 31 OF 2021**

M SILA, J

JUNE 9, 2022

BETWEEN

OMAR ALI RASSAM & 4 OTHERS PLAINTIFF

AND

CHRISTOPHER KARISA KAZUNGU & 6 OTHERS DEFENDANT

RULING

(Application for injunction; plaintiffs claiming ownership of the suit land but the 1st – 3rd defendants, and the 4th – 5th defendants also displaying title to the same land; application decided on a balance of convenience; order that status quo in relation to title and possession be maintained until the conclusion of the case)

1. This suit was commenced through a plaint filed on 15 February 2021. In the plaint, it is pleaded that the 1st plaintiff (Omar Ali Rassam) was allocated the land LR No. MN/III/2056 (Plot No. 2056) through a letter of allotment in the year 1991 for agricultural purposes. It is averred that he subsequently subdivided the Plot No. 2056 into Subdivisions No. 5051, 5052, 5053, 5054 and 5055. The Plot No. 5051 was then subdivided into the Plots No. 5386, 5387, 5388 and 5389 each measuring approximately 2.588 Ha and titles issued in May 2009. The Plot No. 5052, was transferred to the 2nd plaintiff (Mohamed Ali Rassam) and was later subdivided into the Plots No. 5380, 5381, 5382, 5383, 5384, 5385 and 5390 each measuring 1.654 Ha, and titles were issued in September 2009. The Plot No. 5384 and 5385 were transferred by the 2nd plaintiff to one Ahmed Sheikhamin Msellem in February 2011 and this latter Plot No. 5385 subsequently transferred to three persons namely Naran Keshra Halai, Dhirendra Premji Halai and Vijay Kumar Khimji Ravi in March 2012. The Plot No. 5380 was further subdivided into the Plots Nos. 6997, 6998, 6999, and 7000. Plot No. 5054 was transferred to the 5th plaintiff (Abdulahakim Salim Twahir) in December 2009; Plot No. 5055 transferred to the 4th plaintiff (Harissa Hassan Rasam) in May 2009. Plot No. 5055 was then subdivided into the Plots No. 5787 and 8788 and titles issued in October 2010. The tenure is said to be freehold. The plaintiffs aver



that they have been enjoying quiet possession of their respective parcels of land and have developed them. It is pleaded that in the year 2019, the National Land Commission (NLC) advertised the mother Plot No. 2056 for allocation but this advertisement was withdrawn when it was established that the land had already been allocated to the plaintiff and subdivided. The plaintiffs contend that they discovered that on 27 April 2012, a grant was issued to the 1st – 3rd defendants (Christopher Karisa Kazungu, Joshua Baya Jefwa and Matano Ahmed Matano) over the same Plot No. 2056 under a leasehold tenure for 99 years from 1 May 2012. They also discovered other subdivisions pursuant to this title being the Plots Nos. 19118, 19119, 19121-19129, 19131-19135 but the plaintiffs aver that they do not know who the registered proprietors of these parcels of land are. It is added that another title over the same Plot No. 2056 was issued to the 4th defendant (Prime Holdings Limited) on 12 January 2015 under a leasehold tenure of 99 years from 1 October 1994. The 4th defendant then transferred his interest to the 5th defendant (Tuvalu Limited) on 28 May 2015. The plaintiff contends that the action of the Registrar of Titles (sued as 6th defendant with the Attorney General as 7th defendant) of issuing a second title to the 1st – 3rd defendants, and another to the 4th defendant, over the same parcel of land is illegal and null and void ab initio. In the suit, the plaintiffs seek the cancellation of the titles issued to the 1st – 5th defendants.

2. Together with the plaint, the plaintiffs filed an application for injunction seeking to have the defendants restrained from interfering with the possession of the plaintiffs of the land in dispute and to also bar them from dealing with their said titles. It is that application which is the subject of this ruling. The application is supported by the affidavit of Omar Ali Hassan, the 1st plaintiff. He has more or less reiterated what I have set out above on the history of the disputed land. To his affidavit, he annexed various documents including some of the titles said to have emanated from his original title. He also annexed some photographs said to demonstrate the developments made on the land.
3. The 1st – 3rd defendants filed Grounds of Opposition and a replying affidavit to oppose the application. In the grounds, it is averred that the suit herein is sub judice as there are two other matters relating to the dispute being Mombasa High Court Constitutional Petition No. 52 of 2012 and Mombasa High Court Civil Suit No. 42 of 2012. The same is reiterated in the replying affidavit and copies of the pleadings are attached. It is further deposed that the plaintiffs have not displayed any title to the Plot No. 2056 and therefore had no right to subdivide it. He has deposed that the land was allotted to them on 8 August 2011 and that they have been in occupation.
4. The 4th defendant filed a replying affidavit sworn by Francis Kipkosgei Chepkonga, one of its directors. He deposed that through a letter of allotment dated 14 March 1991, the disputed land was allocated to the 4th defendant. It was subsequently surveyed and registered as Plot No. MN Section III 2056-9 Kijipwa and the requisite payments were made. A title was then issued on 12 January 2015. The land was then sold and transferred to the 5th defendant for Kshs. 80,000,000/=.
5. The position of the 5th defendant is that she purchased the land in the year 2014 from the 4th defendant upon due diligence that it was the 4th defendant who was the owner of the land. In January 2021 she applied to the County Government of Kilifi to erect a boundary wall and it was in the course of erection of the wall that the current dispute arose.
6. I have considered the application and the submissions of counsel.
7. This is an application for injunction and to sustain such an application, the applicants need to demonstrate a prima facie case with a probability of success; show that they stand to suffer irreparable loss unless the injunction is granted; and where the court is in doubt, it will decide the application on a balance of convenience.



8. The case of the plaintiffs is that the disputed land, as Plot No. 2056/III/MN, was allocated to the 1st plaintiff, who later subdivided it and sold portions of it to the other plaintiffs. Whereas it is true that the applicants have not displayed a title in either of their names for the Plot No. 2056, they have however displayed titles to what they say are subdivisions of the mother plot. The 1st – 3rd defendants on the other hand assert that the Plot No. 2056 was allocated to them and they have a title in their name. The position of the 4th and 5th defendants is that the Plot No. 2056 was allocated to the 4th defendant who later sold it to the 5th defendant. They have also displayed their title. I think that by displaying titles to the subdivisions of the mother Plot No. 2056, prima facie, the plaintiffs have demonstrated that they may have a legitimate interest in the land under dispute. Of course, this land is also claimed by the other defendant in the case who have also displayed their titles. All parties herein have competing claims to the same land based on titles that they hold. I wouldn't wish to go too deeply into weighing the case of the plaintiffs vis-à-vis that of the defendants, or even the case of the defendants between themselves, for it is clearly apparent that what is before this court is an extremely complex dispute of ownership of land, which can only be resolved after a full hearing on merits. It is my view therefore that it is best that this application be decided on a balance of convenience.
9. I hold the opinion that the balance of convenience tilts towards maintaining the current status quo in so far as possession and titles to the land are concerned. Thus, the current possession of the land needs to be maintained until the dispute herein is resolved. Whoever is in possession should not make any developments on the land until this dispute is resolved and the land should be maintained in the status that it is at the moment till conclusion of the suit. There should be no building of walls or any other structures on the land nor invasion of it by any party which will go to alter the status quo. In so far as the titles in issue are concerned, all parties are hereby restrained from selling, charging, leasing, or entering into any dealings over the disputed land, irrespective of whatever title they hold. The Land Registrar is also hereby restrained from proceeding to register any dealings arising out of all the titles disclosed herein.
10. On the costs of the application, the same shall be costs in the cause.
11. Before I close, I am aware that it has been raised that this suit is sub judice. I have deliberately not addressed myself to that pleading and I will give further directions on that after delivery of the ruling herein.
12. Orders accordingly.

DATED AND DELIVERED THIS 9 DAY OF JUNE 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA

