



REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
PETITION NO. 2 OF 2010

IN THE MATTER OF: ARTICLES 22 AND 23, CONSTITUTION OF KENYA

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLE 40, CONSTITUTION OF KENYA**

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA

**(SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS OF INDIVIDUAL)
HIGH COURT PRACTICE RULES, 2006**

BETWEEN

ZINJ LIMITED PETITIONER

AND

**THE HON. THE ATTORNEY GENERAL
COMMISSIONER FOR LANDS
PRINCIPAL REGISTRAR OF TITLES
CHIEF LAND REGISTRAR
SAN MARCO DEVELOPMENT PROJECT.....RESPONDENTS**

RULING

The Notice of Motion dated 1st December 2010 is made pursuant to section 84 of the Constitution (Protection of Fundamental Rights and Freedoms of the Individual), Order L Rule 1 Civil Procedure Rules and section 3A of the Civil Procedure Act. The application seeks that the applicant OMAR MSHAMU ISMAIL be joined as an interested party in this matter.

It is premised on grounds that:

(a) The proposed applicant/interested party has an interest in this matter as he is a registered owner of the piece of land known as NGOMENI/SQUATTER SCHEME/40 which is one of the parcels the petitioner claims ownership to.

(b) A Title Deed over the said property was issued on 27th July 2007 and has not been declared by any court or other competent authority, to be fraudulently acquired and/or irregular for duplicity or otherwise.

(c) The orders sought in the petition may adversely affect the applicant/proposed interested party as a registered proprietor in the petition dated 13th September 2010.

(d) The petitioner has adversely mentioned the applicant/proposed interested party in the petition.

(e) Enjoining the proposed interested party will greatly assist this court in determining the issues affecting all parties in this matter.

The applicant has sworn a supporting affidavit to which he has annexed a copy of official search marked OMI 1 which shows him as the registered proprietor of the parcel Ngomeni Squatter/504 as at 11th November 2009, and that the petitioner mentions him adversely at page 5 of the petition dated 13th September 2010 and more specifically by name at page 7.

The applicant is the chairman of the Land Adjudication Committee and also a member of a larger group of allottees/squatters who were allocated Title Deeds in the area covered by Ngomeni Squatter Settlement Scheme. The applicant and members of his family have lived on the property all their lives and were allocated the property by the Government of Kenya under the Ngomeni Squatter Settlement Scheme.

On 27th July, the applicant was registered as the absolute owner of the parcel and a Title Deed issued to him under the relevant provisions of the Registered Lands Act (Cap 300). He was never served with the Orders of this court dated 15th September 2010 and only got to know of them by word of mouth in local *barazas* within Malindi Town. He further states that the petitioner will not suffer any prejudice by his application.

There were no documents filed in opposition to the application. At the hearing of the application, Mr. Otieno for the 5th respondent indicated he had no objection to the application. Mr. Mazrui who held brief for Mr. Nowrojee for the Petitioner seeks this;

“While my instructions are that while not consenting to the application, we do not oppose it”

The petitioner’s claim is that it is the registered owner of LR NO. 25528 CR 35029 situated in the Coast Province measuring 425.7 hectares, which originated out of an extension of the petitioner’s previous property known as LR No. 10754/IR, 15081. The petitioner’s concern is that in 2007, the Government issued numerous other titles over parts of the same land resulting in duplicate titles and in consequence to which persons issued with those titles have invaded the petitioner’s lands and remained there.

The petition at paragraph 41 mentions persons who do not qualify to be given the plots as being among others (d) the Chairman of the Adjudication Committee himself. (f) the family of the said Chairman.

The applicant herein has stated in his supporting affidavit that he is chairman of the Adjudication Committee, again in paragraph 44 of the affidavit sworn by Mohamed Abubakar who describes himself as the Director and Chief Executive of the petition. He mentions the applicant/proposed interested party adversely and specified him by name as OMAR ISMAIL MUSHAMU aka OMAR ISMAIL MSHUMA.

Secondly, the order of 15th September 2010 relates to all persons purporting to derive title from LR No. 25528 (CR 35029). The applicant has been mentioned by petitioner as being one of those individuals, which means that any further order issued will directly affect him and so he ought to participate in the proceedings.

It is patently clear that applicant’s interest on the land will notably be affected by the petition, not only as chairman of the adjudication committee but also as a beneficiary of what is referred to as the duplicate titles issued by Government of Kenya in 2007 – which benefit the petitioner contests. I am persuaded, that for the just determination of this petition, the applicant must be enjoined as an interested party. The

upshot is that the application has merit and is allowed.

The interested party to file and serve papers in response to the chamber summons within 21 (twenty one) days from today. The petition is granted leave to file further affidavit if need be within 14 (fourteen) days of that service.

The applicant/interested party bears the costs of this application.

Delivered and dated this **28th** day of **March 2011** at Malindi.

H. A. OMONDI
JUDGE

Mr. Nowrojee for petitioner
Mr. Naulikha for 1-4 respondent
No appearance for 5th respondent
Miss Were holding Muthee for interested party

ORDER – Hearing of the Chamber Summons shall be on 21st June 2011. Interim orders extended till then.

H. A. OMONDI
JUDGE
28-03-2011