



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Misc Civ Appli 585 of 2005

IN THE MATTER OF: THE PARCELS OF LAND KNOWN AS PLOT NO.

MOMBASA MAINLAND NORTH 111/112 AND L.R. NO. MN/III/1111

IN THE MATTER OF: THE LIMITATION OF ACTION ACTS CAP 22

OF LAWS OF KENYA

BETWEEN

**MWINYI HAMISI ALI.....
.....APPLICANT**

VERSUS

- 1. MIKE MAINA**
- 2. FLYOVER INVESTMENTS LTD**
- 3. CAUSEWAY ENTERPRISES LTD.....
RESPONDENTS**

RULING

The Applicant in this Originating Summons (OS) (whom I will hereinafter refer to as the plaintiff) claims to have acquired title by adverse possession to two pieces of land situated North of Mtwapa Creek in Mombasa District and known as Land Reference Numbers MN/III/1111 and MN/III/1112 (the suit pieces of land) against the registered owners, Mike Maina, Flyover Investments Limited and Causeway Enterprises Limited, the Respondents and claims orders entitling him to be registered as the owner of the two pieces of land in place of the Respondents.

In his chamber summons dated the 29th September 2005 Chengo Nguma Benguma claims that he and six others including the plaintiff in this case are the plaintiffs in Mombasa HCCC No. 64 of 2004 in which they are seeking orders entitling them to be registered as owners of the piece of land known as L.R. No. 324/III/MN which includes the two pieces of land claimed by the plaintiff in this case. They are seeking to be enjoined in this OS to enable them stake their claim.

On 3rd October 2005 Gladys Riziki Nyamawi and six others for and on behalf of 399 others filed an application to also be enjoined in this matter. They are seeking orders more or less similar to those sought by Benguma. I will refer to these groups as Interested Parties.

On the 28th November 2005 the plaintiff filed an application seeking an order of injunction to restrain the Interested Parties their servants or agents or anybody claiming through them from interfering with his occupation of the suit pieces of land and a further order directing Mtwapa Police Station to ensure that the order of injunction is complied with.

With the consent of the parties' advocates the three applications were head together.

Messrs Maosa and Okanga for the Interested Parties submitted that the suit pieces of land do not exist. What exists is a Government piece of land known as L.R. No. 324/III/MN which comprises of several hundreds of acres and on which the Interested Parties together with the plaintiff have resided for along time. They are in HCCC No. 64 of 2004 seeking a declaration that the grant of the piece of land to the defendants in that case was fraudulent and that they are entitled to be settled thereon. They seek leave to be enjoined in these proceedings so that they can urge their claim to the suit pieces of land which are portions of L.R. No. 324/III/MN which they are claiming in the said case. They contend that they will be prejudiced if they are not enjoined.

With regard to the plaintiff's application for injunction they strongly oppose it and argue that if it is allowed they will be shut out of the suit pieces of land on which some of them have resided from time immemorial.

The plaintiff on his part strongly opposes the Interested Parties' applications. While conceding that the Interested Parties reside on a large piece of land adjoining the suit pieces of land he contends that they have never resided on the suit pieces of land and that the suit pieces of land are not portions of the land they occupy. He claims that the Interested Parties have just come onto the suit pieces of land and started erecting structures to enable them stake claims to them. Mr. Gikandi for the plaintiff submitted that some of the interested parties are in the process of erecting structures on the suit pieces of land and urged the court to visit the land and see for itself what is happening.

I have considered these submissions and pursuant to the plaintiff's Advocates' invitation I did visit the suit pieces of land on 12th May 2006. I would like to start with the Interested Parties applications.

As already stated the plaintiff admits that some of the Interested Parties have lived in his vicinity for a long time. He, however, contends that they have never occupied any part of the suit pieces of land. He sees their applications as going to confuse issues and in particular his claim to the suit pieces of land. The Interested Parties on their part claim that they have, with the plaintiff, been occupying the suit pieces of land as well as the adjoining large piece of land of which the suit pieces of land are only but portions. They do not therefore want the plaintiff to be registered as the owner of the suit pieces of land to their exclusion.

These are contentious issues which I cannot decide in an application like this without hearing evidence from both parties. In the circumstances I allow the Interested Parties' said applications and order that they are hereby enjoined in these proceedings. They should file their pleadings by way of affidavits, if any, within fifteen (15) days.

I now turn to the plaintiff's application for injunction. As I have said I did visit the suit pieces of land on the 12th May 2006. The plaintiff's complaint is not entirely without foundation. On what I was told is L.R. No. MN/III/1111 I saw an old homestead comprising of the main house, cattle boma, what appears to have been stores, a dairy and an animal watering trough. On the other piece of land I saw relatively new structures some of them under construction as I was being taken round. Except for a kiosk near the road and two structures one occupied by Karisa Masha and the other by Riziki Charo all the others are unoccupied. Mr. Okanga for the Interested Parties told me that as the Interested Parties are very poor people they are able to put up temporary structures which after some time get damaged and the owners

are forced to put up new ones. Whether that is true or not will have to await the hearing of the matter.

The security situation appeared to me to be quite volatile. I want to make it quite clear to the plaintiff and the Interested Parties that they yet have to establish their respective claims, if any, to the suit pieces of land. While the matter is pending before court order has to be maintained. The court cannot allow a situation where a fight breaks out over the suit pieces of land. In the circumstances I must allow the application for injunction so that peace and tranquility is maintained until this case is heard and determined. Except for the owners of the kiosk which I said is near the road to KARI, Karisa Masha and Riziki Charo all the other people who have put up new structures, some of which as I have said, are being erected now, have to forthwith stop constructing or going into them and stay out of the land beyond and on the sea side of the earth road to KARI until this case is heard and determined. They have to go to wherever they have been staying before they started erecting those structures. Because of the number of the people involved I direct the Officer Commanding Police Division (OCPD) Kilifi to ensure that this order is complied with.

The costs of the three applications shall be costs in cause.

DATED and delivered this 17th day of May 2006.

D. K. MARAGA

JUDGE