



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC NO. 193 OF 2019**

**MAHFUDH ABDULRAHMAN MOHAMED.....PLAINTIFF**

**VERSUS**

**AHMED SAID ABDUL-RAHMAN & ANOTHER.....DEFENDANTS**

**RULING**

1. This ruling is in respect of the Notice of Motion application for injunction dated 29<sup>th</sup> October, 2019 which was filed by the plaintiff together with the plaint. The plaintiff's case as elaborated in the plaint is that he is the lawful heir/beneficiary of 16.67% share of PLOT NO.MOMBASA/BLOCK XVI/1343 comprising the estate of Abdulrahman Ahmed Mohamed (deceased) who is the plaintiff's father and the defendants grandfather through the plaintiff's late brother Said Abdulrahman Ahmed Hassan (deceased). The plaintiff avers that by virtue of the foregoing he is the lawful proprietor of the 1<sup>st</sup> floor apartment comprising a three (3) bedroom house and attendant facilities situated in the residential building standing on PARCEL REFERENCE NO. MOMBASA/BLOCK XVI/1343 (the suit premises). The plaintiff states that pursuant to a number of civil suits as between the defendants and the plaintiff, to wit ELC No.37 of 2013; KC Misc Civil appl. No.24 of 2018; CMC Land Case N.86 of 2018 and HC SUCC. Cause No.326 of 2012, and in the interest of maintaining cordial relations with the defendants who are his biological nephews, the plaintiff entered into diverse consent agreements with the defendants, withdrawing the entirety of his claim against them. The plaintiff states that the foregoing notwithstanding, on or about 12<sup>th</sup> July 2019 and repeatedly thereafter, the defendants proceeded to the plaintiff's premises and interfered with plaintiff's properties and threatened to evict him from the suit premises, and asking the plaintiff to handover vacant possession and pay rent arrears. The plaintiff contends that he is neither a tenant nor a licensee on the subject premises. In the suit, the plaintiff wish to have orders of a declaration that he is the lawful proprietor of the suit premises, an order of permanent injunction, general damages as well as costs of the suit.

2. In the application for injunction, the plaintiff is seeking an order of temporary injunction restraining the defendants from levying execution, attachment, sequestration and/or distress against any assets of the plaintiff and/or in any manner whatsoever, interfering with plaintiff's possession, occupation enjoyment and/or derivative use of the suit premises until the hearing and determination of this application and the suit.

3. The application is supported by the affidavit of Mahfudh Abdulrahman Mohamed, the plaintiff sworn on 29<sup>th</sup> October, 2019. The plaintiff has annexed copies of pleadings in Mombasa HC Succession Cause No.326 of 2012; the last will and Testamentary of Abdulrahman Ahmed Mohamed; correspondences among others.

4. In opposing the application, the defendants filed a replying affidavit sworn by Muhsin Said Abdul Rahman, the 2<sup>nd</sup> defendant on 14<sup>th</sup> November, 2019. He has denied the allegations made by the plaintiff but admitted that there have been previous suits between the plaintiff and the defendants. The defendants also state that the plaintiff has no *locus standi* and/or legal capacity to institute this suit, adding that the suit is incompetent, frivolous, vexatious and scandalous. It is their contention that the 16.67% share of the estate of the deceased does not belong to the plaintiff but is to be shared amongst all the eleven (11) heirs of their grandfather.

5. The application was canvassed by way of written submissions which were duly filed by the advocates for the plaintiff and the advocates for the defendants. I have considered the application and the rival submissions. The application herein is for injunctive orders which are equitable reliefs granted at the discretion of the court. Further, the court will warn itself that at this stage, it is not dealing with the disputed facts to finality but only determining whether the applicant is deserving of injunctive orders. The court will also take into account that injunctive orders are issued whenever the suit property is in danger of disposition or alienation before the issues in dispute have been resolved. A party also seeks injunctive relief when he/she feels that his/her rights have been infringed.

6. The principles upon which an interlocutory injunction may be granted are well settled. One has to establish a *prima facie* case with a probability of success and an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. If in doubt, the court will decide the matter on a balance of convenience.

7. In this case, it is not in dispute that the suit premises initially belonged to one Abdulrahman Ahmed Mohamed (deceased) who was the plaintiff's father and the defendant's grandfather. While the plaintiff's case is that he is the sole proprietor of 16.67% share of the estate of the deceased the defendants on their part contend that the said 16.67% share is to be shared among all the eleven (11) heirs. It is therefore clear that both the plaintiff and the defendants are laying claim to the suit premises. The issue as to who is entitled to ownership of the suit premises can only be determined during the full hearing. Having looked at the facts that have emerged in this case and the evidence adduced by way of affidavits, in particular the ruling dated 31<sup>st</sup> May, 2018 in Mombasa Succession Cause No.326 of 2012 annexed to the plaintiff's affidavit in which the plaintiff's claim over the suit premises (by way of objection) failed, it is the view of this court that the plaintiff has not established a prima facie case with a probability of success against the defendants. As regards irreparable damage, I take the view that any damage suffered by the plaintiff, if any, can be quantified in damages.

8. Arising from the above, I find that the Notice of Motion dated 29<sup>th</sup> October, 2019 lacks merit and the same is dismissed. Considering the relationship of the parties in this case, I order parties bear their own costs.

9. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 19<sup>TH</sup> DAY OF MAY, 2021**

.....

**C.K. YANO**

**JUDGE**

**IN THE PRESENCE OF:**

Yumna Court Assistant

**C.K. YANO**

**JUDGE**