



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 197 OF 2017

SEA MEADOWS LIMITED.....PLAINTIFF

VERSUS

1. RAJAB SAID LIMO

2. SALIM SAID LIMO

3. RAJAB CHARO SHUNGU

4. GEORGE RAJAB CHARO

5. SHIDA NGINYO

6. KAINGU BALOZI DANDASI

7. ALI NGUMA

8. ALEX KATANA

9. JUMAA NASSI SULEIMAN.....DEFENDANTS

JUDGMENT

1. By a Plaint dated and filed herein on 2nd October 2017, Sifa Meadows Ltd (the Plaintiff) prays for Judgment against the nine (9) Defendants for: -

a. An order of permanent injunction restraining the Defendants, their agents, servants, employees and/or any other persons claiming through them or under their authority from trespassing into and/or remaining in the Plaintiff's Plot No. 282 Malindi;

b. An eviction order be issued against the Defendants and or any other persons claiming through them or under their authority with respect to Plot No. 282 Malindi; and

c. Costs and interests.

2. Those prayers arise from the Plaintiff's contention that it is the registered proprietor of the said parcel of land measuring some 87.916 acres or thereabouts. The Plaintiff avers that sometime in the year 2016, the Defendants herein encroached onto the suit property and purported to apportion some portions thereof without any justification and/or reasonable cause. Despite several requests and meetings held with the local administration, the Defendants have persisted in their acts of trespass hence occasioning grave loss and damage to the Plaintiff.

3. From an Affidavit of Service filed herein on 19th December 2017, the Defendants were served with the summons and the other pleadings herein on 22nd November 2017. Despite the said service, they have neither entered appearance nor filed any response to the Plaintiffs' claim. This matter accordingly proceeded by way of formal proof.

4. At the trial herein, the Plaintiff called one witness in support of its case. Hezekiah Abednego Wayungubala Ongoma (PW1) is the

Chairman and director of the Plaintiff Company. He told the Court that the other director to the company is his wife. Adopting his Statement as filed herein on 2nd October 2017, PW1 testified that the Plaintiff is the registered proprietor of the said Plot No. 282 Malindi. He told the Court that sometime in the year 2016, the Defendants defiantly encroached and trespassed onto their land with some of them even trying to dispose portions thereof to third parties.

5. PW1 told the Court that the Plaintiff and himself had in various instances sought the help of the Area Chief and Assistant Chief to resolve the problem. In this respect, they had held three meetings (barazas) to inform the neighbours that the said parcel of land not only belongs to the Plaintiff but that the Plaintiff had actually changed the user thereof from agricultural to residential cum commercial. They further informed them that they intended to commence development thereon and asked them to stop any trespass thereon. The Defendants have however ignored the same and have continued in their encroachment and trespass.

6. I have perused the pleadings as filed by the Plaintiff, the sole testimony of the Plaintiff's witness as well as the evidence adduced at the trial. I have similarly perused and considered the submissions placed before me by Mr. Mwadilo, Learned Counsel for the Plaintiff.

7. The Plaintiff Company prays for an order of injunction restraining the Defendants from trespassing and/or remaining on the suitland. It also wants an eviction order to issue against the Defendants who have encroached upon the land and/or any other person claiming through them.

8. The conditions to be met by a litigant who is seeking injunctive relief were set out by the Court of Appeal in *Nguruman Limited –vs- Jan Bonde Nielsen & 2 Others, CA No. 77 of 2012 (2014) eKLR*, as follows: -

In an interlocutory injunction application, the applicant has to satisfy the triple requirements to: -

a. Establish his case only at a prima facie level;

b. Demonstrate irreparable injury if a temporary injunction is not granted; and

c. Allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”

9. From the material placed before me, it was not in dispute that the Plaintiff is the registered proprietor of the suit property. The Plaintiff's director Hezekiah Abednego Wayungubala Ongoma (PW1) had by an Indenture dated 19th November 1983 acquired the suitland measuring 87.916 acres from the previous owner one Sheikh Omar Bin Dahman. Subsequently and by a Conveyance dated 8th August 2015, PW1 transferred the property to the Plaintiff herein.

10. As provided under Section 24 (a) of the Land Registration Act, 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 said Act provides as follows: -

1. 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 and 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 the ground 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.

2. A Certified copy of any registered instrument signed by the Registrar and sealed with the seal of the Registrar, shall be received in evidence in the same manner as the original.”

12. The Defendants herein neither entered appearance nor filed a response to the Plaintiff's claim. On the material before me, there was nothing to suggest that the Plaintiff's title was acquired on the grounds of fraud or misrepresentation and/or that it was acquired illegally, unprocedurally or through a corrupt scheme. This Court was therefore obliged to proceed on the basis that the Plaintiff is the absolute and indefeasible proprietor of the suit premises.

13. The Plaintiff has accused the Defendants of illegally encroaching upon its property without any lawful excuse or reason. In support of this position, the Plaintiff produced in evidence a letter dated 5th December 2016 from the Ganda Location Area Chief addressed to the OCS Malindi Police Station identifying the Nine (9) Defendants herein as the intruders who had invaded the Plaintiff's land and were now busy selling the land to other people. Such conduct is certainly inimical to the Plaintiff's interests as the absolute owner of the land as prescribed under Section 24 of the Land Registration Act aforementioned.

14. In the premises, this Court was satisfied that the Plaintiff has proved its case on a balance of probabilities and that it is entitled to the

orders sought herein. Accordingly, I hereby allow the Plaintiff's suit as prayed in the Plaint with costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 16TH DAY OF JULY, 2021.

J.O. OLOLA

JUDGE