



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ENVIRONMENT AND LAND COURT
ELC CASE NO 255 OF 2018
(FORMERLY COMMERCIAL 83 OF 2009)

GAMI QUARRIES LIMITED.....1ST PLAINTIFF

RAMJI DHANJI GAMI..... 2ND PLAINTIFF

VERSUS

MUSA FAKIR MOHAMED.....1ST DEFENDANT

SALHAN RAHEMTULLA.....2ND DEFENDANT

SAADA HYDER SALIM.....3RD DEFENDANT

AZIZA HYDER SALIM..... 4TH DEFENDANT

RULING

I. INTRODUCTION:-

This is a matter that seem not to be making any meaningful progress at all.

1. On 7th December 2021 this Honorable Court offered to give directions on it in order to provide it with a more clear path towards an expeditious disposal. The Honorable Court did it pursuant to the inherent powers vested onto it under the Provisions of Article 159 (1) & (2), Sections 1, 1A, 3 and 3A of the Civil Procedure Rules 2010, and Sections, 3 & 13 (1) of the Environment and Land Court Act; others are Sections 101 of the Land Registration Act of 2012 and 51 of the Land Act of 2021 which vests this court with what is now known as the Oxygen overriding Principles and objectives on jurisdiction. These are to justly, fairly and proportionately dispose off matters. By so doing, this court assists in the efficient clearance of the over growing backlog of cases and also helps in regarding and restoring the ever demanding and eroding public confidence towards the Judiciary.

II. THE SUBJECT MATTER

2. I take great cognizance this matter which revolves around the subject matter of the ownership to all that parcel of Land known as Land Reference No. Plot. No. Sub-Division 10947 Sections 1 mainland North – Mombasa has been in this court from the year 2008 – which to date is close to 12 years for no apparent good reason at all. Whatsoever, I need not underscore the fact that land in Kenya is significantly emotive. People depend on it for their livelihood.

Ideally, the case has been marred by numerous and unnecessary interlocutory applications at the behest of the Advocates and hence parties in the case. Paradoxically, the Defendant through their Advocates have been very active in the case. This state of affairs has to stop henceforth, if we are to make any progress. In saying so I am guided by the old legal maxim and the provisions of Article 159 (2) (b) of the Constitution of Kenya to wit “Justice delayed is justice denied.”

3. On 18.10.2021 the Plaintiffs filed an application seeking to be granted temporary injunctions orders restraining the Defendants from any interference over the suit land. The matter was fixed for “*inter-partes*” hearing on 3rd November, 2021. On 3rd November, 2021 neither the

Plaintiffs nor their advocates turned up nor even send a representative to court. Its only Mr. Hassan Advocate for the Defendants who attended. In the given circumstances, the Honorable Court proceeded on to dismiss the application for want of prosecution and non-attendance under the Provisions of Order 12(91) and 17(92) of the Civil Procedure Rules. In order to expedite it, the Honorable Court further fixed it for full hearing of the main suit on 17th January 2022.

4. On 4th November, 2021 the Plaintiff/Applicants under several provisions of the law being Order 12 Rule 7 and Order 45 of the Civil Procedure Rules seeking court to set aside, vary and/or review its orders of 3rd November, 2021 and to reinstate their applications dated 18.10.2021 and 25.10.2021 respectively.

III. THE DIRECTIONS

5. As indicated herein this matter has to make progress to its logical conclusion and this court will disallow any party retrogressive attempts on holding it hostage or at ransom. We emphasize it must positively develop going forward as eventually litigants want to know their fate. For these reasons, therefore I am constrained to make the following directions:-

a) THAT the Notice of Motion application by the Plaintiff dated 4th November, 2021 is bereft of any merit and hence be and is hereby dismissed with costs to the 1st, 2nd, 3rd and 4th Defendants/ Respondents herein.

b) THAT unless appealed, reviewed and/or discharged against the orders by this Court of 3rd November, 2021 subsists.

c) THAT this matter has to proceed as already scheduled for full trial on 17th January, 2022 without fail.

d) THAT in order to preserve the suit land the Land Registrar Mombasa, is directed to register an inhibition against all that parcel of Land known as Land Reference Number. Plot No. Sub-Division 10947 SECTION 1 Mainland North Mombasa pursuant to the Provision of Sections 68(1) & (2) and 69 of the Land Registration Act and Regulations 79 (1) (2) & (3) of the Land Registration (General) Regulations at the expense and costs of the Plaintiff/Applicants herein

e) THAT Costs of the Application to be borne by the Plaintiff.

IT IS SO ORDERED.

RULING IS DATED, SIGNED and DELIVERED AT MOMBASA VIRTUALLY THIS 14TH DAY OF DECEMBER, 2021.

HON. JUSTICE L.L NAIKUNI

JUDGE

ENVIRONMENT AND LAND COURT, MOMBASA

In the presence of:-

M/s. Yumna – the Court Assistant

Mr. Muganda Hassan the Plaintiff.

Mr. Hassan Advocate Defendants.