



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELCA NO. 61 OF 2013

NOEL MWATATI MWAKILELE.....APPELLANT

VERSUS

JULIUS MWANGATA.....RESPONDENT

RULING

(Application to be enjoined as interested party in an appeal; appeal emanating from a decision of the Land Disputes Tribunal; applicant being an owner of one of the parcels of land mentioned in the award but not having been party to the Tribunal proceedings; application allowed)

1. The application before me is brought by one James Moses Mugo who has applied to be made an interested party in these proceedings.
2. To put matters into context, the dispute between the appellant and the respondent was commenced before the Bahari Land Disputes Tribunal created under the Land Disputes Tribunal Act (repealed in 2011 by the Environment and Land Court Act). The claimant before the Tribunal was Julius Mwangata the respondent in this appeal. At the Tribunal, he stated that he purchased 6 acres of the disputed land in the year 1978 from one Saidi Kandondo and he took possession. He claimed that in the year 2002, the appellant came to the land and started clearing it and he later intermittently came to the land. On the other hand, the appellant asserted that he purchased a portion of the land which was described as Tezo/Roka/273 from Saidi Kandondo in the year 1987 and they obtained the Land Control Board's consent to subdivide the land into two portions of 6 acres each. The two portions bore the numbers 1202 and 1203 and the parcel No. 1203 was subsequently transferred to him. He later subdivided the same into the plots No. 1243 and 1244 and transferred the plot No. 1243 (measuring 5 acres) to the name of Hamilton Mwandawiro Samboja. In its award, the Tribunal held that the sale to the appellant was wrongful since the land had already been sold to the respondent in the year 1978. The Tribunal further directed the Land Registrar to issue the respondent with title to the 6 acres being the plot No.1203. Aggrieved, the appellant filed an appeal before the Provincial Appeals Committee. However, the Committee had not finalized the matter by the time the Land Disputes Tribunal Act was repealed and the appeal was therefore transferred to this Court and the same is pending hearing.
3. In this application, the applicant avers that he is the lawful owner of the land parcel Kilifi/Roka/1243 which he purchased from Hamilton Mwandawiro Samboja. He thus contends that his interests are at stake.
4. The application is not opposed and on my part I see no reason why I should not allow it. It is apparent that whatever award the respondent obtained affects the owner of this parcel of land Kilifi/Roka/1243 for the respondent obtained an award which essentially makes him the owner of this parcel of land as well. The owner at the time of the award was Mr. Samboja and he was never made a party before the Tribunal. It is now disclosed that he has transferred his interest to the applicant and any judgment that will be rendered in this matter will therefore affect the applicant. The applicant as owner of one of the parcels in dispute is also entitled to be heard before any adverse orders are made against him.
5. The application is therefore allowed and the applicant is hereby enjoined as interested party to this appeal and is at liberty to make submissions on the appeal.
6. There will be no orders as to costs.
7. Orders accordingly.

DATED, SIGNED and DELIVERED at MOMBASA this 29th day of January 2020.

MUNYAO SILA,

JUDGE.

IN THE PRESENCE OF:

Ms. Arika for the applicant.

Ms Mulisho for the appellant.

No appearance on the part of M/s Katsoleh & Company Advocates for the respondent.

Court Assistant; David Koitamet.