



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**CIVIL SUIT NO. 251 OF 2017**

**RAMADHAN IDDI RAMADHAN**

**ABUBAKAR OMAR KOMBO (AKA BAKARI OMARI)....PLAINTIFFS**

**VERSUS**

**1. BROWN MWANGISI CHARO**

**2. BRUNO**

**3. ISLAM OMAR ALI**

**4. MOHAMMED IDDI**

**5. KAZUNGU KATANA**

**6. CHARO MRISHA**

**7. KITHOROBÉ ALI KITHOROBÉ**

**8. RASHID KALU**

**9. MALIKUWA KHAMIS IDDI**

**10. IDDI KHAMIS**

**11. KAWI**

**12. TAHIRO..... DEFENDANTS**

**RULING**

1. By this Notice of Motion dated 18<sup>th</sup> December 2017, Ramadhani Idd Ramadhani and Abubakar Omar Kombo (aka Bakari Omar) suing as the Administrators of the Estate of Liwali Sheikh Salim Bin Khalfan (the Plaintiffs) pray for a conservatory order to preserve an agreement for sale of four acres of a parcel of land known as Plot M 39, Mguruleni Malindi or an order of injunction barring the twelve Defendants from inducing a breach of contract or otherwise interfering with the fencing of the said four acres pending the hearing and determination of the suit.

2. In the alternative, the Plaintiffs urge the Court to require the Defendants to keep the peace and desist from inducing a breach of the contract of the sale of the four acres of the said suit property.

3. The application which is supported by an affidavit sworn by the 1<sup>st</sup> Plaintiff Ramadhan Idd Ramadhani is premised on the grounds that:-

**a. The Plaintiffs are the administrators of the said estate which includes Plot No. 39 Mguruleni, Malindi measuring over 1033 acres;**

**b. The Plaintiffs have agreed to sell four acres of the land to raise money to cater for costs and other out-goings relative to cases the estate has had to defend at Mombasa;**

**c. The Agreement for sale has been made and the Purchaser would like to survey, make boundary marks and fence off the four acres before completion of the transaction but the Defendants have disrupted such activities without sufficient cause or reason;**

**d. The Defendants are intermeddlers who have no interest in or over the portion of four acres of the suitland.**

4. The application is opposed. In a Replying Affidavit sworn by the 7<sup>th</sup> Respondent Kitorobe Ali Kitorobe on behalf of the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> Respondents, he asserts that they are equally the grandchildren of the slaves of the late Liwali Sheikh Salim Bin Khalfan and are therefore also beneficiaries of his estate in the same capacity as the Plaintiffs herein.

5. Contrary to the Plaintiffs assertions that they were appointed Administrators of the Estate of Liwali Sheikh Bin Khalfan, the Defendants aver that the deceased executed a will and established a Wakf over the said portion of land in favour of his slaves and to their children.

6. The Defendants assert that the 3<sup>rd</sup> Defendant and other non-parties herein had earlier filed Malindi HCCC No. 93 of 2009 against the Plaintiffs and several others seeking to have the orders obtained in the succession process by the Plaintiffs to be declared null and void.

7. The Defendants further aver that the Plaintiffs herein have also filed another suit being Malindi HCCC No. 35 of 2015 against some of the Defendants on allegations of inducing a breach of contract. They accuse the Plaintiffs of selling portions of the land without any justification and/or reference to the other beneficiaries of the estate of the late Liwali Sheikh Salim Bin Khalfan.

8. I have considered the application and the response thereto. I have also perused and considered the written submissions as filed herein by Mr. SM Kimani, Learned Counsel for the Plaintiffs and Ms Wangari Mwangi Learned Counsel for the Defendant.

9. The Plaintiffs urge this Court to restrain the Defendants from inducing a breach of contract of sale of about four acres of land set to be hived-off a parcel of land known as Portion No. 39, Mguruleni, Malindi. It is the Plaintiff's case that they have entered into a valid agreement for the sale of the said portion of land with a third party in their capacity as the Court appointed Administrators of the Estate of one Liwali Sheikh Salim Bin Khalfan (deceased).

10. The Plaintiffs aver that when the Purchaser of the land went to survey the four acres that were to be sold, the Defendants erupted with protests and violently and without any sufficient cause stopped the Surveyor from undertaking the exercise. The Plaintiffs assert that the Defendants were aware of the sale and their protests and threats to use force against the Plaintiffs, the Purchaser and the Surveyor were aimed at frustrating and inducing a breach of the said sale agreement as the same cannot be completed without a survey and excision of the four (4) acres.

11. On their part the Defendants assert that they are like the Plaintiffs, the grandchildren of the slaves of the deceased Liwali Sheikh Salim Bin Khalfan and that accordingly they are equal beneficiaries of the estate of the deceased. The Defendants accuse the Plaintiffs of fraudulently obtaining Letters of Administration intestate for the estate of the deceased yet according to them, the deceased executed a will and established a Wakf over the said portion of land in favour of his slaves and the children.

12. From the material placed before me, it is clear that there is an inchoate agreement for the sale of the four acres of land set to be excised from the suit property. The Defendants do not deny frustrating the sale by use of force and threats of physical violence. They justify their action on their claim that they have similar entitlement to the suit property just as the Plaintiffs and accuse the Plaintiffs of selling the said portion of land without the permission of the other beneficiaries of the estate.

13. As it were, it is clear to me that as the matters stand now, the Plaintiffs are the lawfully appointed legal representatives of the estate of the late Liwali Sheikh Salim Bin Khalfan. That Grant was issued to them in ***Mombasa High Court Succession Cause No. 94 of 2011. In the matter of the Estate of the late Liwali Sheikh Salim Bin Khalfan*** (deceased) and was confirmed on 11<sup>th</sup> September 2012.

14. While the Defendants accuse the Plaintiffs of fraudulently obtaining the same, I have not been shown any order or even an application for stay or revocation of the proceedings leading to the issuance of the Grant.

15. As the lawfully appointed legal representatives of the deceased's estate, the Plaintiffs have power to deal with the free assets thereof including land by way of sale by reason of Section 82 of the Law of Succession Act.

16. In the premises, I am satisfied that there can be no justification as at now for the Defendants actions in regard to the suit property.

17. In that regard, I find and hold that the Plaintiff's application dated 18<sup>th</sup> December 2017 has merit. The same is allowed in terms of Prayer No. 3 thereof with costs.

**Dated, signed and delivered at Malindi this 6<sup>th</sup> day of February, 2020.**

**J.O. OLOLA**

**JUDGE**