



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 27 OF 2019**

**CHAI TUNE NYAMBU.....PLAINTIFF**

**VERSUS**

**CHARO K. MALINGI.....DEFENDANT**

**RULING**

1. By this Notice of Motion dated and filed herein on 8<sup>th</sup> May 2019, Chai Tune Nyambu (the Plaintiff) prays for an order of a temporary injunction restraining the Defendant from trespassing and encroaching upon Plot No. 368-Vyambani situated in Ganze Sub-Location within Kilifi County, pending the hearing and determination of this suit. In addition, the Plaintiff urges the Court to direct the OCS Kilifi Police Station to provide security within the said property.

2. The application is supported by a short 7-paragraph Affidavit in which the Plaintiff who acts in person avers as follows:-

1. *That I am a male adult of sound mind and the Applicant herein thus competent to swear this Affidavit.*
2. *That I am the lawful owner of Plot No. 368 Vyambani Adjudication situate in Ganze Sub County.*
3. *That the Defendant has trespassed into the suit property and build structures and cultivating the same without Plaintiff's consent.*
4. *That despite intention to sue intimated, the Defendant has failed to move out of the suit premises.*
5. *That it is in the best interest of justice that this Honourable Court be pleased to grant the orders herein above sought.*
6. *That I swear this affidavit in support of the application herein.*
7. *That what is deposed to hereinabove is true to the best of my knowledge, information sources whereof have been disclosed and belief."*

3. But in an equally short 8-paragraph Replying Affidavit sworn and filed herein on 2<sup>nd</sup> July 2019, Charo K. Maingi (the Defendant) responds as follows:-

1. *That I am the Defendant well conversant with the facts of this case hence competent to make and affirm this affidavit.*
2. *That I have read the Applicant's application dated 8<sup>th</sup> May 2019 wish to reply thereto.*
3. *That the application herein is vexatious, incompetent and bad in law and an abuse of the process of the Court.*
4. *That in response to Paragraph 2 of the Supporting Affidavit the same is denied and the Defendant authoritatively states that he is the registered owner of the suit property attached herein are the payment receipts marked "CMK1A and B".*
5. *That in response to Paragraphs 3 and 4 of the Supporting Affidavit the same is denied and the Defendant avers that the Plaintiff launched a case at the Vinagoni/Majajani Adjudication Committee and which the Defendant was awarded, attached are the tribunals findings marked "CKM2."*

6. The Plaintiff appealed to the Minister and the appeal appealed to the Lands Minister and it was also dismissed, attached herein are the Minister's findings marked "CKM3".

7. That I make this affidavit opposing the application here and I pray that the same be dismissed with costs.

8. That what is deposed herein is true to the best of my knowledge information and belief.

4. I have perused the application and the response thereto. The Plaintiff lodged this suit on 8<sup>th</sup> May 2019 seeking an order for the Defendant to deliver vacant possession of the suit premises.

5. A perusal of both the Plaintiff filed herein and the application presently before me reveals that the Plaintiff instituted this suit on the basis that he is the lawful proprietor of the said Plot No. 368 Vyambani. The Plaintiff has however not filed any documents and there are indeed no attachments to his Supporting Affidavit or any explanation as to how he came to own the said property.

6. From the attachments to the Defendant's Replying Affidavit however, it is apparent that the dispute concerning Plot No. 368 Vinagoni/Majani Adjudication Section has been the subject of objection proceedings as provided under the Land Adjudication Act. By a determination made on 15<sup>th</sup> March 1999, the Land Adjudication Officer upheld the Defendant's objection and adjudicated the parcel of land in favour of the Defendant herein.

7. It is also clear that the Plaintiff herein was aggrieved by the said determination and lodged an appeal to the Minister being **Land Appeal Case No. 14104/2004** pursuant to Section 29 of the Land Adjudication Act. On or about 1<sup>st</sup> August 2017, having heard the Appeal, the Ministerial Panel dismissed the Plaintiff's Appeal and confirmed the adjudication of the land to the Defendant.

8. As it were, Section 29(1) of the Land Adjudication Act provides as follows:-

***(1). Any person who is aggrieved by the determination of an objection under Section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by:-***

***a) Delivering to the Minister an Appeal in writing specifying the grounds of the appeal; and***

***b) Sending a Copy of the Appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final." (Emphasis mine).***

9. As can be seen from the provisions of Section 29 (1) of the Act as cited above, once the Minister has rendered his decision, that is the end of the matter. From my reading of the Land Adjudication Act, Cap 284 of the Laws of Kenya, the Legislature did not intend that a person whose case fails to succeed before the Ministerial Panel can appeal to this Court or approach it in the manner that the Plaintiff has done herein.

10. In my considered view, the dispute in regard to who owns the suit property has been settled and this Court has no jurisdiction to re-open the case and determine again, who between the Plaintiff and the Defendant is the rightful owner of the property. The Ministerial Panel has already resolved that dispute and clearly stated that the Defendant is the owner of the property.

11. In the circumstances, the application before me and the suit upon which it is based is misconceived and without any foundation whatsoever. Both the application and the suit herein are accordingly struck out with costs to the Defendant.

**Dated, signed and delivered at Malindi this 27<sup>th</sup> day of May, 2020.**

**J.O. OLOLA**

**JUDGE**