



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

MOMBASA ELC NO. 38 OF 2019

MOHAMED YUNIS (Suing as a trustee for and on behalf of Suhail Shahid) 1ST PLAINTIFF

SUHAIL SHAHID.....2ND PLAINTIFF

VERSUS

ABDALLA SWALEH RENGWA (Sued personally and as executor of the estate of

Swalehe Mohamed)1ST DEFENDANT

HASSAN SWALEHE RENGWA (Sued personally and as executor of the estate of

Swalehe Mohamed).....2ND DEFENDANT

BLUSHING BEACH LIMITED..... 3RD DEFENDANT

CHIEF LAND REGISTRAR, KWALE.....4TH DEFENDANT

RULING

(Application for injunction; plaintiffs claiming to have purchased the suit land from the previous registered owner who later died; plaintiffs claiming that title was then registered in name of 2nd defendant; 1st and 2nd defendants undertaking a succession cause for the estate of the alleged vendor and having the property registered in their name by way of transmission and later selling the land to the 3rd defendant; plaintiffs displaying the sale agreement and title that was in their name; prima facie case established; order of injunction stopping dealings and maintaining status quo issued)

1. The application before me is that dated 4 March 2019. It is basically an application for injunction that was filed alongside the plaint. The case of the plaintiffs/applicants is that the 2nd plaintiff is the rightful owner of the land parcel Kwale/Msambweni "A"/2909. It is pleaded that he purchased this land in the year 1978 from the previous owner, Swalehe Mohamed, and title registered in his favour. They aver that in the year 2016 while undertaking due diligence, the land records could not be traced, and that they discovered in July 2018 that the suit property is now registered in the name of the 3rd defendant as proprietor. Upon investigations, they found that the Land Registrar, sued as the 4th defendant, undertook a rectification of the register and reverted the register back into the name of Swalehe Mohamed who had died in the year 1998. The 1st and 2nd defendant then filed a succession matter and became registered as proprietors of the land through transmission. They then transferred the land to the 3rd defendant. It is the case of the plaintiffs that all these transactions were fraudulent. In the case, they want a declaration that they are the rightful owners of the suit land and for an order that they be reinstated in the register as the bona fide owners. In the application for injunction, they wish to have orders to stop any dealings over the suit land pending hearing of the suit and to stop the defendants from taking possession of the land.

2. In their response, the 1st and 2nd defendants, through a replying affidavit sworn by the 2nd defendant, have acknowledged that the property was transferred to them by way of transmission, following a succession case over the estate of the late Swalehe Mohamed. They then transferred the property to the 3rd defendant. They aver that they have never sold the land to the plaintiffs and claim that the documents of the plaintiffs are fake and do not reflect the true position of the transactions over the suit property.

3. For the 3rd defendant, a replying affidavit of Jennifer Mary Shamalla, its director, was filed. She has doubted the authenticity of the records displayed by the plaintiffs, and asserted that the 3rd defendant is the correct proprietor of the suit land.

4. I have gone through the documents filed in this case. I think there is a case to be tried as to whom between the plaintiffs and the defendants, held, or holds, good title to the suit land. The plaintiffs have displayed what they say is the sale agreement entered into between themselves and Swalehe Mohamed, a transfer instrument dated 28 February 1980, and a title deed in the name of Suhail Shahid, the 2nd plaintiff, issued on 28 February 1980. I cannot wish away this evidence and would conclude that the plaintiffs have established a prima facie case with a probability of success. It is therefore prudent that an order be issued, which I hereby issue, stopping the 3rd defendant, who is the current registered proprietor, from selling, leasing, charging, or entering into any dispositions over the suit land.

5. I am not too sure about the possession of the land. I will order that the status quo as to possession be maintained until the case is finalized. No party should undertake any, or any additional developments, on the land, until this case is finalized. In other words, the land should be maintained as it is currently by the person who is in possession of it.

6. On costs, the same shall be costs in the cause.

7. It is so ordered.

DATED AND DELIVERED THIS 14TH DAY OF MAY, 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA