



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 199 OF 2016

MOHAMED KAI GARI.....PLAINTIFF

VERSUS

JOYCE CHAKWE DECHE.....DEFENDANT

RULING

1. By this Notice of Motion application dated 29th October 2018, Mohamed Kai Gari (the Plaintiff) prays for an order that he be allowed to amend his Plaint as per the amended draft attached to the application. The application which is supported by an affidavit sworn by the Plaintiff is premised on the grounds that:-

i) The Plaint as originally drawn does not bring out the entire issue in controversy and the amendments sought are meant to bring the real question between the parties before the Court for determination and

ii) It would be fair, just and reasonable to enjoin Rondoff Kiti Mwangala and Patricia Nyavula Deche in the suit.

2. The application is opposed. In a Replying Affidavit sworn and filed herein on 9th April 2019, Joyce Chakwe Deche (the Defendant) asserts that the application lacks merit and is an outright abuse of the Court process. The Defendant avers that the suit property being Plot No. 2234 Mwembe Kati/Kasidi is registered in her name and that of two other people who are not the proposed defendants and that enjoining the proposed defendants herein would not assist the Court in any way.

3. The Defendant further asserts that the area within which the suit property lies has been declared an adjudication section and hence all pending or fresh matters before Court should not be entertained without the prior written consent of the Land Adjudication Officer.

4. In his Supplementary Affidavit sworn on 16th September 2019 however, the Plaintiff asserts that his Plot No. 2211 is situated at Mafisini and that the same is not the Plot No. 2234 situated at Mwembe Kati /Kasidi which the Defendant lays claim on.

5. I have perused and considered the application as well as the response thereto. I have similarly considered the written submissions and authorities placed before me by the Learned Advocates for the parties.

6. In her response to the application, the Defendant avers that the area within which the suit property lies has been declared an adjudication section and that this matter ought not to be entertained by this Court without the prior written consent of the Land Adjudication Officer for the area. That is a matter that goes to the jurisdiction of this Court to entertain the dispute and must therefore be dealt with by this Court before any further step is taken.

7. In support of her contention that the area has been declared an adjudication section, the Defendant has annexed a copy of a notice dated 11th November 2015 from the Land Adjudication and Settlement Officer Kilifi one Felix M Kiteto giving notice of the establishment of an adjudication section over the area known as Mwembe Kati/Kasidi Adjudication Section in Kilifi County.

8. On his part, the Plaintiff denies that the suit property falls within the declared Adjudication Section. According to the Plaintiff, the Defendant has all along been laying claim over Plot No. 2234 which falls within the said Adjudication Section while his own Plot is number 2211 situated at a place known as Mafisini and which area does not fall within the declared Adjudication Section.

9. In support of his contention that his parcel of land does not fall within the said Adjudication Section, the Plaintiff has annexed to his Supplementary affidavit filed herein on 17th September 2019 what he says is the "area map" of Mafisini. There is however nothing on the said 'map' indicating that it is for the Mafisini area nor is its source disclosed.

10. Paragraph 5 of the Notice from the Kilifi Land Adjudication and Settlement Officer dated 11th November 2015 gives the affected adjudication area to include the following:-

“The boundary proceeds along the Mwapulu valley which also marks the Pingilikani adjudication sectional boundary running North East until it reaches the Ngombeni-Bandara-Salama Road running along the Road on a Southwestwardly course and the Pingilikani Section boundary past Muyu Wa Chigingi at Mafisini where it joins the Bandara-Salama Registration Section. It continues along the Road and the Bandara-Salama Sectional boundary to the point of commencement.”

11. Arising from the foregoing, it was clear to me that the declared Adjudication Section was not limited to the Mwembe Kati/Kasidi area but was a vast area extending upto the area known as Mafisini wherein the Plaintiff claims his parcel of land is situated. I was therefore on the evidence placed before me not persuaded that the disputed property falls outside the declared Adjudication Section.

12. As it were, Section 30 of the Land Adjudication Act, Cap 284 of the Laws of Kenya provides as follows:-

“Except with the consent in writing of the adjudication officer, no person shall institute, and no Court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29(3) of this Act.”

13. The suit before me was instituted by a Plaint filed herein on 2nd August 2016. That was about nine months after the area was declared an Adjudication Section. The Plaintiff has not placed any evidence before this Court demonstrating that he obtained the consent of the Kilifi Land Adjudication and Settlement Officer prior to the institution of this suit.

14. Accordingly, it was clear to me that the suit as filed and the application based on it dated 29th October 2018 is misconceived and that this Court lacks jurisdiction to entertain the same. In the premises, both the application and the Plaintiff's suit are hereby struck out with costs to the Defendant.

Dated, signed and delivered at Malindi this 25th day of June, 2020.

J.O. OLOLA

JUDGE