



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC NO. 54 OF 2020

DORCAS AYOMA MBALANYA.....1ST PLAINTIFF

ANN NYAWACHA MWOK-HANDA.....2ND PLAINTIFF

VERSUS

SKYMAN FUELS LIMITED.....1ST DEFENDANT

THE LAND REGISTRAR, KWALE.....2ND DEFENDANT

NATIONAL LAND COMMISSION.....3RD DEFENDANT

RULING

(Application for injunction; both plaintiffs and 1st defendant having title to the same land; suit land earmarked for compulsory acquisition and payment for compensation due from 3rd defendant; held that there be no dealings on the land and the compensation money be held pending hearing of the suit)

1. This ruling is in respect of an application for injunction dated 19 May 2020 which was filed contemporaneously with this suit. The application is opposed by the 1st defendant. The 2nd and 3rd defendants, despite having been duly served, are yet to enter appearance in this suit.
2. In their plaint, the plaintiffs aver that they are the joint registered proprietors of the land parcel Kwale/Kinango/Tsunza/SS/99 (the suit land) having purchased it from one Gamoyo Shoma Kodi. It is averred that the vendor was the allottee of the land, and a direct transfer was done by the Land Adjudication and Settlement Office, which issued the plaintiffs with an allotment letter dated 5 May 2013. A sale agreement was then prepared on 15 May 2013. It is pleaded that consent of the Matuga Land Control Board, was sought and granted on 15 May 2013, paving the way for the transfer and registration. The suit land appears to have been earmarked for compulsory acquisition and the plaintiffs aver that it is them who were gazetted as owners for purposes of compensation. However, when they filed the compensation forms, they were informed that two other entities are claiming proprietorship. They then carried out a search on 17 September 2019, which showed that the 1st defendant was issued with a title deed on 20 November 2018, which is said to have been long after the title deed of the plaintiffs. In the suit, the plaintiffs want a declaration that they are the rightful owners of the suit land; an order to have their names restored in the register as proprietors; and cancellation of the title of the 1st defendant.
3. In the application for injunction, the plaintiffs seek orders to have the 1st and 2nd defendants restrained from dealing with the 3rd defendant, and for an order restraining them from selling, subdividing, transferring or entering into dispositions over the suit land pending hearing of the case.
4. The supporting affidavit is sworn by Dorcas Ayoma Mbalanya, the 1st plaintiff. She has annexed a copy of their title deed, which shows that it was issued on 27 May 2013. She has averred that the Mombasa Southern By-Pass is going to pass through this road, and therefore, the National Land Commission, the 3rd defendant, has gazetted the land for compensation. She has deposed that interim orders are necessary because the 3rd defendant is carrying out a verification of ownership exercise.
5. The 1st defendant filed a replying affidavit sworn by Nicholas Wangamati, its director, to oppose the application. He has deposed that the 1st defendant is a bona fide purchaser for value of the suit land. He has deposed that the company did due diligence and found that one Gamoyo Shoma was the registered proprietor and he had a title deed for the suit land. He has annexed a copy of that title deed and it shows that it was issued to Gamoyo Shoma on 15 May 2018. The same title deed, and a search, show that Gamoyo Shoma became registered as

proprietor of the suit land on 27 May 2013. The 1st defendant company thus entered into an agreement for sale on 14 August 2018 with the said Gamoyo Shoma (also known as Chimbugwa Bongo). Consent to transfer was obtained from the Matuga Land Control Board and the property was then transferred to the name of the 1st defendant. The 1st defendant was subsequently issued with title on 20 November 2018. It is deposed that the 1st defendant is aware that the land was marked for acquisition and they protested when they saw the names of the plaintiffs listed as owners. He has raised issue on the authenticity of the plaintiffs' title and pointed to what he considers to be flaws in the documents of the plaintiffs.

6. I have considered the matter. Both plaintiffs and the 1st defendant assert themselves to be the rightful proprietors of the suit land. Indeed, both parties have title deeds to the suit land and claim to have purchased the land from the same person. It is difficult at this stage of the proceedings to make a firm finding on who between the plaintiffs and the 1st defendant holds good title. That will need to await a full hearing of the matter. It is certainly important that pending the hearing of the suit, the subject matter be preserved, and the money that is due from the 3rd defendant, being compensation for compulsory acquisition, be held in abeyance until the suit is heard and determined. What I cannot stop is the construction of the road through the suit land. None of the parties is contesting its acquisition, only that this court needs to determine who the rightful proprietor of the suit land is, so that the said person may be compensated. With that in mind, I order as follows :-

(i) That neither part should sell, lease, or deal with the suit land until this suit is fully determined.

(ii) The 3rd defendant is hereby restrained from paying any person as compensation for compulsory acquisition of the suit land until this suit is fully determined.

(iii) That any money due for compulsory acquisition of the suit land be held by the 3rd defendant until this suit is fully determined and direction given on who ought to be the beneficiary of the said monies.

(iv) That costs of this application be costs in the cause.

7. Orders accordingly.

DATED AND DELIVERED THIS 29TH DAY OF JULY 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA