



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. 59 OF 2015

MAIMUNA HUSSEIN AHMED.....PLAINTIFF/ APPLICANT

=VERSUS=

COUNTY GOVERNMENT OF KILIFI.....DEFENDANT/RESPONDENT

R U L I N G

1. The Application before me is dated 27th April, 2015. In the application, the Plaintiff is seeking for the following orders:

(a) THAT upon interpartes hearing, an injunction be issued restraining the Defendant or its agents, servants, workmen, legal representatives or any one claiming interest through it from demolishing and/or interfering with the Plaintiff's on-going construction on plot number 21 pending the hearing and determination of this suit.

(b) THAT costs of this application be provided for.

2. The Application is premised on the grounds that the Plaintiff is the actual owner of plot number 21 at Timboni, Watamu; that the Defendant has indicated that it wants to expand a market and that the Plaintiff's house has been marked with an "X", an indication that the Defendant intends to demolish the Plaintiff's house.

3. According to the Plaintiff's Affidavit, the plans for her house were approved by the Defendant and that she has built the ground floor.

4. In his Replying Affidavit, the Defendant's Chief Officer in Charge of Physical Planning deponed that the Plaintiff's house has been built on land that was set aside for public utilities; that the Defendant has developed a market opposite the suit property and that the Plaintiff has not attached forms PPA1 and PPA2 which are approvals granting permission for development.

5. It is the Defendant's representative's deposition that the Defendant is mandated to control development of land and buildings in the interest of proper and orderly developments.

Submissions:

6. The Plaintiff's advocate submitted that on 27th September, 2013, the Plaintiff's building plan was recommended for approval and that is when she commenced construction; that having received the

approval fees of Kshs.16,200, the Defendant is estopped from demolishing the building and that the Defendant has not attached on its Affidavit the list held by it of the approved plans.

7. The Defendant's counsel submitted that the Plaintiff's location map does not exist in the local development map; that plot no. 21 does not belong to the Plaintiff and that the approved local development plan for Watamu shows that the alleged plot number 21 forms part of land earmarked for a bus park.

8. Counsel submitted that pursuant to the provisions of Section 27 of the Physical Planning Act, once the regional physical development plan is approved, no development can take place on the land unless it is in conformity with the approved plan.

9. Counsel submitted that the Plaintiff has not established a prima facie case with chances of success.

Analysis and findings:

10. The Plaintiff's claim in this matter is that she is the owner of plot number 21 at Timboni, Watamu. On the said plot, the Plaintiff had commenced construction of a permanent structure before the same was marked with a letter "X" by the Defendant, denoting that the same was to be demolished.

11. It is the Plaintiff's case that before she commenced constructions on the suit property, she obtained the Defendant's approval to do so. The Defendant's representative has denied that it is the Defendant who approved the alleged development by the Plaintiff on plot number 21 and that in any event, plot number 21 is land reserved for a bus park.

12. The Plaintiff has annexed on her affidavit a receipt that was issued by the Defendant on 25th September, 2013 for Kshs.16,200 being "building fees for plot no. 21 Timboni, Watamu".

13. The Plaintiff has also annexed on her affidavit the drawing of the proposed building on plot no. 21 Watamu.

14. The Plaintiff has not produced any evidence to show how she acquired the suit property, which according to the Defendant, was reserved for a bus park.

15. Although the Defendant received Ksh.16,200 as building fees from the Plaintiff on 25th September, 2013, there is no evidence before me to show that the Plaintiff's building plan on plot no. 21 Watamu was approved by the Defendant.

16. The copy of the Plan that was produced by the Plaintiff shows that the same was stamped with the words "Recommended for approval" on 27th September, 2013 by the District Physical Planner.

17. A recommendation for approval does not entail an approval for the purposes of the Physical Planning Act. Section 31 of the Act provides that any person requiring a development permission is supposed to make an application in a prescribed form and submit it to the Clerk of the local authority for the area in which the land concerned is situated.

18. Section 33(1) of the Act provides that a local authority (the Defendant) may grant the applicant a development permission in the prescribed form or may refuse to approve the application. The prescribed form is what is known as PPA2.

19. The Plaintiff in this matter has not produced a PPA2 form to show that her application to construct on the suit property was ever approved by the Defendant.

20. In the absence of an approved development plan, the Defendant is entitled issue to the Plaintiff an enforcement notice pursuant to the Provisions of Section 38 (1) of the Act requiring the demolition or alteration of any building or works that has been commenced without the Defendant's approval.

21. Considering that the Plaintiff has not presented any evidence to show that the Defendant approved the construction of the building on plot number 21 Timboni, which falls within its jurisdiction, I find and hold that the Plaintiff has not established a prima facie case with chances of success.

22. The Plaintiff has also not shown that before plot number 21 was reserved as a bus park vide the local development plan that has been attached on the Defendant's affidavit, she was the legal or beneficial owner of the land.

23. For those reasons, I dismiss the Plaintiff's Application dated 27th April, 2015 with costs.

Dated, signed and delivered in Malindi this **6th** day of **May**, 2016.

O. A. Angote

Judge