



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.77 OF 2015

MOHAMED MARE.....PLAINTIFF/APPLICANT

=VERSUS=

1. PONDA NZOLA

2. LAND SETTLEMENT OFFICER – KILIFI

3. LAND REGISTRAR- KILIFI

4. ATTORNEY GENERAL.....DEFENDANTS

R U L I N G

1. The Application before me is the one dated 19th May, 2015 in which the Plaintiff is seeking for the following orders:-

(a) THAT pending the hearing and determination of this Application and suit an order of temporary injunction do issue restraining the defendant either by itself and/or its authorised agents, servants, employees or otherwise whomsoever from cultivating, trespassing, alienating, selling, advertising, for sale, registering, transferring to itself and/or a third party the ownership and possession of all that property known as Malindi situated in Kilifi County and/or PLOT NO. KIKOMBETHELE SCHEME/798 dealing with the said parcel of land in any manner detrimental to the Plaintiff's interest.

(b) THAT costs of this application be provided.

2. The Application is supported by the Affidavit of the Plaintiff in which he has deponed that he has lived on the suit property for more than 50 years; that his family has been cultivating the land and that the lands officer visited the suit property and found him in possession of the same.

3. According to the deposition of the Plaintiff, the lands officer, recommended that a title deed should be issued to him and that he was actually issued with a plot number 798.

4. It is the Plaintiff's case that although the 1st Defendant has been issued with a Title Deed in respect to the suit property, he has never been in occupation of the land and that the Title Deed was issued to the 1st Defendant contrary to his legitimate expectation.

5. In response, the 1st Defendant deponed that he is the registered owner and entitled to possession of the suit property; that during the demarcation process, he was duly identified as the settler on the suit property and that the Plaintiff or his family did not raise any objection to the allotment of the land to him.

6. According to the 1st Defendant, the Plaintiff's father begged his late father to give him a temporary place to stay in 1954 and was shown a small portion of land to cultivate; that the Plaintiff's father managed to get his own land after 3 years and that the Plaintiff's father vacated the small portion and stopped cultivating it.

7. It is the 1st Defendant's case that later on, the Plaintiff sold the land that had been allocated to his father necessitating the Plaintiff's estranged wife and step mother to go back to the initial portion of land belonging to the 1st Defendant; that he allowed them to stay on the said portion and that during the adjudication process he was identified as the owner of the land.

8. The 1st Defendant has denied that the Plaintiff has resided or planted crops on the suit property; that the Title Deed was legally vested to him and that the Application should be dismissed.

9. The Plaintiff's and the Defendant's advocates filed brief submissions in which they rehashed their client's depositions. I have considered those submissions.

10. The Plaintiff's position is that he has been residing on the suit property for more than 50 years. On the other hand, the 1st Defendant has deponed that the Plaintiff has never resided on the suit property.

11. It is not clear from the reading of the Plaintiff's Complaint whether he is claiming the suit property on the basis that he is entitled to it under the doctrine of adverse possession or that the Defendant was issued with a Title Deed in respect to the suit property fraudulently.

12. If the Plaintiff's case is that he is entitled to the land by virtue of the doctrine of adverse possession, then he has not established prima facie case with chances of success because the Title Deed exhibited on his Affidavit shows that the same was issued for the first time to the 1st Defendant on 8th August, 2013. It therefore follows that twelve years have not lapsed from the date when the Title Deed was issued, which is a prerequisite before one can claim land by prescription or adverse possession.

13. If the Plaintiff's case is that the 1st Defendant was issued with the Title Deed fraudulently, he should have particularized the alleged fraud in his Complaint.

14. Although the Plaintiff has deponed that he has always lived on the suit property, there is no evidence by way of photographs to show the activities that he is undertaking on the land.

15. Having not shown by way of photographs his claim of occupation, I find that the Plaintiff has not established the irreparable injury that he will suffer that cannot be compensated by way of damages if the order of injunction is not granted.

16. In the circumstances, I dismiss the Plaintiff's Application dated 19th May, 2015 with costs.

Dated, signed and delivered in Malindi this **14th** day of **September**, 2016.

O. A. Angote

Judge