



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 30 OF 2019

1. STRINGER MUZUNGU LUMWE

2. TSUMA TUJI TSUMA.....PLAINTIFFS

VERSUS

1. SHIDA TUJI TSUMA

2. KARISA TUJI TSUMA

3. KAHINDI TUJI TSUMA.....DEFENDANTS

RULING

1. By this Notice of Motion application dated and filed herein on 16th May 2019, the Plaintiffs pray that an order of inhibition be issued inhibiting the registration of any dealings on all that parcel of land situated at Mwapula/Magogoni in Kilifi County and more particularly known as Mwapula/Magogoni/692 pending the hearing and determination of this suit. The Plaintiffs further pray that the order of inhibition be registered against the said title pending any further orders of this Court.

2. The Application which is supported by an affidavit sworn by the 1st Plaintiff-Stringer Muzungu Lumwe is based on the grounds:-

i) That both the Plaintiffs and the three Defendants herein are descendants of the late Tuji Tsuma;

ii) That during the land adjudication exercise in the area the Defendants who belong to one nucleus family unit obtained registration of the suit property in their names and excluded the names of the family members of the Plaintiff's family who were also entitled to be registered as joint owners;

iii) That the Defendants also omitted to have it noted in the register that they held the suit property in trust of the said families;

iv) That the Defendants have refused to surrender the Title Deed to the Land Registrar in order to have the Plaintiffs' interests registered and have now made arrangements to sell the same to a third party; and

v) That in the event the suit property is alienated or sold as intended, the Plaintiffs will be deprived of their interests thereon and stand to suffer irreparable loss and damage.

3. The application by the Plaintiffs is opposed. In a Replying Affidavit sworn by the 1st Defendant Shida Tuji Tsuma and filed herein on 5th July 2019 he admits that the Plaintiffs and the Defendants herein share a common ancestry by dint of their being the grandchildren of Tsuma Tuji and Lumwe Tuji who were brothers. He however denies that the suit property is their common ancestral land as claimed by the Plaintiffs.

4. The 1st Defendant avers that the Plaintiffs' grandfather moved from their ancestral home in Ribe and relocated to Vyambani where he passed away while the Defendants' grandfather Tsuma Tuji settled at Mwapula Magogoni where he acquired the suit property measuring 68 acres for use for agricultural purposes. The 1st Defendant maliciously registered themselves as the owners of the suit property.

5. On the contrary, the 1st Defendant asserts that demarcation of the boundaries commenced in the area in the 1990s and neither the Plaintiffs nor any of their family members objected to their ownership of the suit property. Thereafter the Government registered the parcels of land and the Defendants' family land was registered as the parcel No. 692 again without any objection from the Plaintiffs. It is only much later in

2017 that the Plaintiffs purported to register a caution on the land and tried to take over the same by use of force.

6. The 1st Defendant further asserts that the Plaintiffs only brought this application in Court after they learnt that the Defendants were about to sell the suit property to a third party and the same is only meant to camouflage their desire to get a share of the proceeds of sale.

7. I have perused and considered the Plaintiffs' application and the response thereto by the Defendants. I have similarly perused and considered the written submissions and authorities placed before me by the Learned Advocates for the parties.

8. In their Plaint dated and filed herein on 16th May 2019, the Plaintiffs pray for a declaration that all that parcel of land known as Mwapula/Magogoni/692 situated within Kilifi County measuring 27.62 Ha (the suit property) is held by the Defendants in trust for themselves. It is the Plaintiffs case that the suit property jointly belonged to their grandfathers the late Lumwe Tuji Tsuma and the late Tsuma Tuji Tsuma.

9. The Plaintiffs aver that during the land adjudication exercise in the area, the Defendants obtained registration of the suit property exclusively in their names and excluded the names of the family members of the Plaintiff's family who were entitled to be registered as joint owners. The Plaintiffs also accuse the Defendants of failing to have it noted in the register of the suit property that they held the land in trust for the family of the Plaintiffs.

10. By the application presently before me, the Plaintiffs aver that they have since learnt that the Defendants intend to sell the suit property to a third party and urge this Court to issue an order of inhibition to inhibit the registration of any dealings on the suit property pending the hearing and determination of this suit.

11. Section 68(1) of the Land Registration Act provides that:-

“The Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, generally until a further order, the registration of any land lease or charge.”

12. As it were, an order of inhibition issued under Section 68 of the Land Registration Act is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until the suit in which the said property is a subject is disposed of. Section 69(1) of the Land Registration Act gives this Court the power to grant an order of inhibition for a particular time or until the occurrence of a particular event or a further order.

13. The Court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending the trial.

14. From the material placed before me, it was apparent that while the parties herein are related by blood, they are two distinct families. While the Plaintiffs are the descendants of one Lumwe Tuji, the Defendants trace their ancestry to Lumwe Tuji's brother the late Tsuma Tuji.

15. It was also apparent to me that the registration of the Defendants as the proprietors of the suit property was as a result of an adjudication process conducted in accordance with the Land Adjudication Act. While the Defendants contend that the Court has no jurisdiction to hear the matter on account that the Plaintiffs had not obtained the consent of the Land Adjudication Officer, those submissions were clearly misguided as there was no evidence placed before me to demonstrate that the Adjudication process was on-going as to warrant such consent.

16. What was however clear to me was that the process of adjudication under the Land Adjudication Act provides a clear in-built mechanism for resolution of disputes arising out of the adjudication process. The suit property is a vast parcel of land measuring some 27.62 Ha. From the material so far placed before the Court, there was no evidence that the Plaintiffs had at any particular time occupied any part thereof and/or that they raised any objection to the same being adjudicated to the Defendants as required under Section 26 of the Land Adjudication Act.

17. The suit property was registered in the names of the Defendants on 20th June 2011 some eight (8) years before they instituted this suit and there was no evidence that during that time, they had taken any steps to have the same corrected until the year 2018 when they realised that the Defendants wanted to alienate the same.

18. I am not persuaded that the adjudication process for such a vast piece of land and the subsequent allocation would have been done quietly and secretly to the extent that it would have gone unnoticed by the Plaintiffs who claim to have an interest thereon.

19. In the premises, I am not persuaded that the Plaintiffs had any sentimental attachment as they claim to the suit property and/or that their rights stand to be infringed as to warrant the issuance of the orders sought herein.

20. The application dated 16th May 2019 is accordingly without merit and the same is dismissed with costs.

Dated, signed and delivered at Malindi this 10th day of July, 2020.

J.O. OLOLA

JUDGE