



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

MALINDI ELC CASE NO.8 OF 2019

AMU RANCH COOPERATIVE SOCIETY.....PLAINTIFF

VERSUS

- 1. THE LAMU COUNTY GOVERNMENT**
- 2. THE COUNTY SECRETARY LAMU**
- 3. THE COUNTY EXECUTIVE MEMBER FOR LAND (FAHIMA ARAFAT)**
- 4. THE LAMU COUNTY PHYSICAL PLANNING OFFICER**
- 5. THE LAMU COUNTY SURVEYOR**
- 6. THE NATIONAL LAND COMMISSION**
- 7. THE ATTORNEY GENERAL.....DEFENDANTS**

RULING

1. By its Notice of Motion application dated and filed herein on 26th March 2019, Amu Ranch Co-operative Society (the Plaintiff/Applicant) prays for the grant of an order of injunction against the Lamu County Government (the 1st Defendant/Respondent) either by itself or through its officers (listed as the 2nd to 5th Defendants) as well as the National Land Commission to be restrained from entering, surveying, demarcating and or allocating the suit property to any person or from interfering with the Plaintiff's quiet enjoyment thereof pending the hearing and determination of this suit.

2. The application which is supported by an affidavit sworn by the Society's Chairman Omar T. Mzee is based on the grounds inter alia, that:

a) The Plaintiff is the registered owner of all that piece of land situated at Amu Ranch in Lamu County containing by measurement 25,003 Ha and more particularly known as LR No. 26867, Lamu;

b) The 1st Defendant has illegally, wrongly and or arbitrarily resolved to acquire over 10,000 Ha of the suit property without following the laid down legal procedure and has now taken steps to enter, occupy, sub-divide, demarcate and allocate the said portion to squatters and or trespassers;

c) The Defendants actions are not only illegal and or wrong but they will also render the Plaintiff's socio-economic strategic investment plan inapplicable and unimplementable as it will kill any hope of improving the socio-economic well-being of its members;

d) The Defendants' actions violate the Plaintiff's right to own property and infringe on its members economic right under the Constitution of Kenya, 2010; and

e) The Defendants' actions violate the law on compulsory acquisition and it is a clear demonstration of their disregard for the rule of law and the national values and principles of governance under the Constitution of Kenya, 2010.

3. The application is opposed. In a Replying Affidavit sworn by one Vincent Osewe and filed herein on behalf of the 1st to 4th Respondents on 6th May 2019, the Respondents aver that the National Land Commission (the 6th Respondent) has pursuant to its mandate investigated the suit property and made recommendations for regularization of the said title to include among others the accommodation of the many squatters occupying the same.

4. The 1st to 4th Respondents aver that further to the said recommendations, a meeting was held on 18th January 2016 between the 1st Respondent's Governor and the Plaintiff's Chairman in which a formal request for the surrender of 10,000 acres of land for settlement of squatters was discussed. The Plaintiff agreed to the request subject to their being compensated with another parcel of land of the same size.

5. They told the Court that as advised by the 6th Respondent, the 1st Respondent was to start the process of identification and verification of the squatters but the acreage to be given to them was yet to be agreed upon. Pursuant to the same advise, the Lamu County Assembly resolved to have planning, surveying and regularization of squatters in the Plaintiff's Amu Ranch for budgeting and implementation purposes.

6. The 1st to 4th Respondents therefore deny that the 1st Respondent has illegally, wrongfully and/or arbitrarily resolved to acquire over 10,000 acres of the suit property as alleged and or that it has taken steps to illegally enter and occupy the same. The Respondents further aver that the 1st Respondent is not interested and has not initiated any steps to compulsorily acquire the suit property for purposes of settling squatters.

7. Also opposed to the application are the Lamu County Surveyor and the Honourable the Attorney General sued herein as the 5th and 7th Respondents respectively. In Grounds of Opposition dated and filed herein on 14th May 2019, they aver:

1. ***That the application is premature as the Applicant has not exhibited proof of any survey on the suit property as alleged.***
2. ***That by dint of Section 23(2) of the Survey Act Cap 299, the allegations of an impending survey lacks merit as there is no evidence of any notice served upon the Applicant as required by law.***
3. ***The application is misconceived and lacking in merit as the allegations of compulsory acquisition have not been proven as against the Respondents.***
4. ***That the application has not met the threshold for granting of an injunction.***
5. ***That the balance of convenience and the public interest tilts against the grant of the orders sought.***

8. I have perused and considered the application as well as the response thereto. The Plaintiff Co-operative Society craves orders of injunction to restrain the 1st to 6th Defendants from entering, surveying, demarcating and or allocating the suit property or in any manner whatsoever interfering with its quiet possession thereof.

9. The Defendants however deny that they have done anything to warrant the grant of the orders sought by the Plaintiff herein. While they allude to on-going negotiations between the 1st Defendant/Respondent and the Plaintiff to acquire some 10,000 acres of the suit property, it is their case that they have no interest to compulsorily acquire the property and that the Plaintiff's application is premature and misconceived.

10. As was stated in ***Robert Mugo Wa Karanja –vs- Eco Bank (Kenya) Ltd & Another (2019) eKLR:***

***“The circumstances for consideration before granting a temporary injunction under Order 40 Rule 1 of the Civil Procedure Rules require proof that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property. The Court in such a situation is enjoined to grant a temporary injunction to restrain such acts.*”**

11. A similar position was upheld by the Court of Appeal in ***Charter House Investment Ltd –vs- Simon K. Sang and Others, Civil Appeal No. 315 of 2014*** where the Learned Judges of Appeal observed as follows:

“Injunction is an equitable and discretionary remedy, given when the subject matter of the case before the Court requires protection and maintenance of the status quo. The award of a temporary injunction by Courts of equity has never been regarded as a matter of right, even where irreparable injury is likely to result to the applicant. It is a matter of sound Judicial discretion, in the exercise of which the Court balances the conveniences of the parties and the possible injuries to them and to third parties. In the Giella Case (supra) the Predecessor of this Court laid down the principle that for one to succeed in such an application, one must demonstrate a prima facie case with reasonable prospect of success, that he stands to suffer irreparable damage which cannot be compensated for by an award of damages and that the balance of convenience tilts in his favour.”

12. In the instant matter before me it is clear from the correspondence attached by both the Plaintiff and the 1st Respondent that effective 10th August 2005 the Plaintiff is the registered proprietor of the suit property, a fairly large parcel of land measuring some 25,003 Ha. It is also clear from the said correspondence that the 1st Respondent is intent on acquiring some 10,000 acres thereof for, inter alia, the settlement of some squatters resident within the 1st Respondent's area of jurisdiction.

13. From the Replying Affidavit of Vincent Osewe on behalf of the 1st to 4th Respondents, it does emerge that in preparation for the

intended acquisition, the 1st Respondent has taken some steps to carry out sensitization meetings with the local communities and have formed various committees for purposes of planning and surveying the suit property.

14. Indeed, from the material placed before me, the Legislative arm of the 1st Respondent, the Lamu County Assembly had, on 1st July 2016 resolved to conduct a survey of the suit property. While it was evident that the Plaintiff had made some concessions towards ceding part of the suit property to the 1st Respondent, it is apparent that the parties are yet to agree on the modalities thereof which according to the Plaintiff should include compensation with a similar sized parcel of land elsewhere.

15. In my considered view, the Plaintiff has good ground in the circumstances to be apprehensive that it is about to be deprived of its land by the 1st Respondent without compensation. Applying the principles for the grant of injunction as set out hereinabove, it was evident to me that the suit property is in need of protection and maintenance of the status quo as there is a prima facie evidence of some intended alienation.

16. In the result, I find merit in the Plaintiff's application dated 26th March 2019. The same is allowed with the costs in the cause.

Dated, signed and delivered at Malindi this 18th day of September, 2020.

J.O. OLOLA

JUDGE