



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT
AT MALINDI
LAND CASE NO. 123 OF 2012

LIKIZO LIMITED.....PLAINTIFF

=VERSUS=

1. YERI KOMBE

2. MARTIN KOMBE

3. DAVID KITHUNGA

4. MUNICIPAL COUNCIL OF MALINDI.....DEFENDANTS

R U L I N G

Introduction

1. What is before me is the Intended Interested Party's Application dated 18th September 2013 and filed on the same day. The Applicant is seeking for the following reliefs:
 - a. **That Nasib Kashuru Mumbo be granted leave to prosecute/defend this suit as an interested party or defendant.**
 - b. **That this Honourable court be pleased issue status quo orders to prevent any development on the suit plot being plot no. Chembe Kibabamshe/407.**
2. The Application is premised on the grounds that the Intended Interested Party has vested interests in the suit property; that the Intended Interested Party is the registered owner of the suit property and that this court delivered a Ruling on 18th July 2013 injuncting the Intended Interested Party from interfering in any way with the suit property and yet he is the registered owner of the suit property.
3. It is the Intended Interested Party's case that the Application for injunctive orders proceeded without his knowledge and was condemned unheard since the Plaintiff chose not to conduct a search at the lands office to confirm the ownership of the suit property.
4. The Plaintiff/Respondent filed its Grounds of Opposition and averred that the Application is a gross abuse of the process of the court and the same should be struck out with costs.
5. According to the Plaintiff, the Intended Interested Party's title is suspect and that the criminal investigations department has confirmed that it is the Plaintiff's title that is genuine.

6. The parties filed their respective submissions and authorities which I have considered.

Analysis and findings

7. The Plaintiff moved this court by way of an Application dated 30th July 2012 for interim injunctive orders. In the Application, the Plaintiff alleged that the Defendants had invaded his suit property notwithstanding the fact that the Plaintiff was the registered owner. The Plaintiff annexed the certificate of lease which had been issued to it on 3rd August 2004.
8. The Defendants denied the Plaintiff's allegations and more specifically the allegation that they had invaded the Plaintiff's land. In their joint Replying Affidavit, the Defendants deponed that they had no claim or interest whatsoever in the suit property. This court proceeded to issue the order of injunction as against the Defendants or any other person acting on their behalf.
9. The Intended Interested Party now wants to be enjoined in this suit on the ground that he is the registered owner of the suit property. The Intended Interested Party is also seeking to set aside my Ruling of 18th July 2013 on the grounds that he was condemned unheard.
10. It would appear that there are two existing titles in respect to the suit property. What is curious about the documents annexed on the Plaintiff's earlier Affidavit and the Intended Interested Party's Affidavit is that none of the parties has annexed the official search to indicate the current registered owner of the suit property.
11. I have perused the Intended Interested Party's Certificate of Lease and it shows that the same was issued to him on 29th September 2010 before it was cancelled and a Lease issued to him by the Commissioner of Lands on 9th July 2013.
12. In view of the fact that the Intended Interested Party is in possession of the Lease which he claims to be valid over the suit property, and for the court to effectually and completely adjudicate upon and settle all questions involved in the suit, the Interested Party should be joined in this suit as a Defendant.
13. When this court delivered its Ruling on 18th July 2013, the Intended Interested Party was not a party to the suit. Indeed, the Defendants in the suit denied that they had any interest in the suit. It would appear that the protagonists in this matter are the Plaintiff and the Intended Interested Party.
14. It is the mandate of this court to determine the validity of the two titles that are in possession of the Plaintiff and the Intended Interested Party. Considering that the said Intended Interested Party was not a party to the suit when I delivered the Ruling, and in view of the fact that the Intended Interested Party was a necessary party at the commencement of the suit, I am of the view that I should set aside my Ruling of 18th July 2013 ex debito justitiae.
15. Having set aside my Ruling of 18th July 2013, and considering that both the Plaintiff and the Intended Interested Party have what they purport to be valid title documents over the suit property, the suit property should be maintained in the current status pending the hearing and determination of the suit.
16. In the circumstances, and for the reasons I have given above, I allow the Intended Interested Party's Application dated 18th September 2013 in the following term:

(a) Nasib Kashuru Mumbo be and is hereby granted leave to defend this suit as a Defendant.

(b) The Plaintiff to serve upon the said Nasib Kashuru Mumbo with the Summons to Enter Appearance and the Plaint forthwith.

(c) The Ruling of this court of 18th July 2013 and the subsequent orders be and is hereby set aside.

(d) Chembe/Kibabamshe/407 be preserved in its current status pending the hearing and determination of the suit.

(e) Each party to bear its own costs.

Dated and Delivered in Malindi this 6th Day of **March 2014**

O. A. Angote

Judge