



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 65 OF 2012

SAMUEL JEFA MWERI.....PLAINTIFF

=VERSUS=

1. SHAURI KAZUNGU aka NGONYO

2. TSUMA KAZUNGU PONDA

3. KAHINDI KAZUNGU PONDA

4. KAINGU KAZUNGU PONDA.....DEFENDANTS

R U L I N G

1. What is before me is the Plaintiff's Application dated 24th April 2013 and filed on 26th April 2013. The Application is seeking for the following reliefs
 - a. **THAT pending hearing and determination of this Application, and or suit temporary injunction do issue restraining the Defendants, their agents, servants or their servants from entering/trespassing into the unregistered identifiable land measuring one (1) acre situated in Gongoni bordered to the East of the subject property, the property of one Kalole, to the West of the subject property, the property of one Kaingu Kageli and the south of the Property, the property of Kazungu Poanda (the deceased).**
 - b. **OCS to effect and ensure that the order is complied with.**
 - c. **Cost of this application be provided for.**
2. According to the Plaintiff's disposition, he purchased all that identifiable unregistered parcel of land measuring one acre situated in Gongoni Location by way of an agreement dated 19th April 2002 from the beneficial owner, KAZUNGU PONDA MWAMBEGU.
3. The said Kazungu Ponda Mwambegu died in the year 2011 and that the Respondents have since then deprived the Applicant his rights to protection of property.
4. The Applicant finally deponed that the Defendants have invaded his property and have threatened him with violence should he set his foot on the land.
5. The 1st Defendant filed a Replying Affidavit on his behalf and on behalf of the other three Respondents and deponed that in 1998, their late father purported to sell one acre being the only land that the family owned; that the Plaintiff told them that he had only leased the land to till it; that they allowed him to till the land but as time went by he appeared to have settled on the land.
6. The Respondents finally deponed that they agreed to refund the Applicant the Kshs.2,000 he had

- paid for the land and they gave the chief the money for onward transmission to the Plaintiff; that they have grown crops on the land which they depend on for food and if the orders are granted they shall suffer irreparably.
7. The Applicant filed a Further Affidavit on 12th June 2013 and deponed that the suit property is adjacent to his 11 acre piece of land and that for many years he has been ploughing the suit land.
 8. The parties agreed to dispose of the Application by way of written submissions which I have considered.
 9. Disposition of land must always be preceded by compliance with statutory requirements in order to give legal validity to property rights.
 10. The Plaintiff has attached a sale agreement dated 19th April 2002 signed by the vendor and the purchaser and witnessed by the chief. The said agreement shows that the purchase price was Kshs.2,000.
 11. It is not in dispute that the suit property was agricultural land. There is no indication that the vendor and the purchaser obtained the consent of the Land Control Board within six months of the date of the agreement.
 12. Although none of the parties addressed me on the requirements of the Land Control Act, Cap 302 viz-a-viz the consent of the board, I have raised the issue because had the consent of the Land Control Board been sought, then the family members would have been summoned by the Board to give their consent for the sale. The issues that are being raised now by the family of the vendor would not have arisen.
 13. In the absence of deposition by the Applicant that he sought and obtained the consent of the Land Control Board of the area within which the suit property is situated, I find and hold that the Applicant has not established a prima facie case with chances of success.
 14. It is the Respondents who are currently in possession of the suit property and they have planted crops on it. The Plaintiff admitted in his affidavit that he resides and cultivates the 11 acres which is adjacent to the suit property. In the circumstances, the Plaintiff shall not suffer irreparable damage in the event the injunctive orders are not given.
 15. For the reasons I have given above, I dismiss the Plaintiff's Application dated 24th April 2013 with costs.

Dated and Delivered in Malindi this 4th day of **October**, 2013.

O. A. Angote

Judge