

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Suit 65 of 2006

RIZIKI MWAMWANDA CHIRIMA.....PLAINTIFF

VERSUS

KWALE TOWN COUNCIL.....DEFENDANT

RULING

Pursuant to the provisions of order XXXIX rules 1,2,3 and 9 of the civil procedure rules, Riziki Mwamwanda Chirima took out the summons dated 5th April 2006 in which he sought for the following orders interalia:-

1 That the plaintiff is the registered proprietor of the suit premises and has been unlawfully deprived of the use thereof.

2 That damage cannot suffice to compensate the plaintiff for the loss of user of the land.

3 Costs

Riziki Chirima swore two affidavits in support of the application. Kwale Town Council, the defendant herein filed the replying affidavit of Francis Nguta Kauli to resist the summons.

The plaintiff alleged that the defendant had unlawfully deprived him of the use of the parcel of land known as L.R.No. 5007/118 CR no. 34206 despite the fact that he is in possession of the certificate of title. The plaintiff annexed to the affidavit in support a copy of the aforesaid title issued on 27th October 2002. The plaintiff averred that in the month of August 2005, he put up a perimeter wall but the defendant's town clerk led a group of people on 27-8-2005 whereupon they removed that fence. The plaintiff made a report to the police but assistance he was accorded. It is alleged that the Kwale Town Council has now commenced putting up sheds on the plot without the plaintiff's consent. Copies of the photographs are annexed to the plaintiff's affidavit.

The defendant on its part stated that the suit premise was not available for allocation as it had been designed as a public utility land. It is alleged the land had been reserved for public toilets. The defendant admitted that the council resolved to have the land repossessed. The defendant annexed the minutes it passed to reposes the land. The defendant also admitted having put up sheds as alleged in the application. Those sheds were allocated to hawkers to trade therein.

I have considered the grounds set out on the face of the summons. I have also taken into account the facts deponed in the affidavits filed for and against the summons plus the annexures attached to those affidavits. It is not in dispute that the applicant is the registered owner of the suit premises. It is not also in dispute that the defendant has put up structures on the aforesaid land. It is said the land was set aside for putting up a public toilet. The defendant has claimed that the plot was grabbed by the plaintiff. It should be made clear that the allegations made by the defendant may be valid. But that is not the way to go about it. The title must first be impeached by a court of law. No person or corporation can decide on its own to revoke a title deed. That is the province of the high court. It is worst in this case in that the defendant has not filed a defence nor a counter claim to challenge the title. In short, the plaintiff enjoys the rights conferred by the aforesaid title until the same is removed. Parties should not be allowed to take short cuts like it happened in this case.

I find the summons to be well founded. I allow the same in terms of prayer 2 and 3. Costs shall be awarded to the plaintiff.

Dated and delivered this 6th day of May 2009

J. K. SERGON

JUDGE