



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

CIVIL SUIT NO. 249 OF 2017

MOOR PARK LIMITED.....PLAINTIFF

AND

MALINDI DHOW LIMITED.....1ST DEFENDANT

KENYA FRIENDS MALINDI LIMITED.....2ND DEFENDANT

JUDGMENT

1. By a Plaint dated and filed herein on 14th December 2017, Moor Park Limited, the Plaintiff herein prays for:-

a) A declaration that the Plaintiff is the registered owner of Plot No. Chembe/Kibabamshe/708;

b) A permanent injunction restraining the defendants, their servants and/or agents from interfering with the Plaintiff's use, ownership and utility of Plot No. Chembe/Kibabamshe/708;

c) Cost of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant.

2. The Plaintiff's claim is premised on the ground that it purchased the suit property from one Karisa Dhuri Kombe for a consideration of Kshs 1,500,000/- on 26th March 2008. The Plaintiff avers that when it bought the suit property, there was no caveat or caution and it was a bona fide purchaser for value without notice.

3. The two Defendants-Malindi Dhow Limited and Kenya Friends Malindi Ltd were served via registered mail as provided under section 1010(1) of the Companies Act, 2015 but they neither entered appearance nor filed a defence. This matter accordingly proceeded by way of formal proof.

4. At the trial herein, the Plaintiff called one witness. Valerio Buciarelli, a shareholder and director of the Plaintiff told the Court that the Plaintiff is and has at all material times been the registered owner of Plot No. 708 situated in Chembe/Kibabamshe, Kilifi. The Plaintiff purchased the Plot on 26th March 2008 from one Karisa Dhuri Kombe at a consideration of Kshs 1,500,000/-. The suit property which measures 1.6 Ha was subsequently transferred to the Plaintiff with a title deed being issued in its name.

5. The Plaintiff's witness stated that since the said purchase, the Plaintiff has been in possession of the same and has been meeting all the requisite outgoings such as land rates to the authorities as by law required.

8. I have perused and considered the pleadings herein and the testimony of the Plaintiff's sole witness. It did however occur to me that while the Plaintiffs seek a declaration to be made and an injunction to issue against the two Defendants, neither the pleadings nor the witness in her testimony to the Court did reveal any reason why the orders are sought against the Defendants.

7. I think it is essential that the cause of action giving rise to a suit ought to be pleaded in the Plaint and be supported by the Claimant's evidence. The cause of action is the reason that the civil suit exists in the first place. In ordinary circumstances, a cause of action consists of two parts; the legal wrong the Plaintiff claims to have suffered and the remedy or relief the Court is being asked to grant.

8. In the matter before me, while the Plaintiff has stated the remedy it wants, it does not state what wrong it has suffered from the acts and/or omissions of the two Defendants named herein. Thus even though the Defendants did not file any defence herein, the facts before me are not in my view sufficient to warrant the grant of the remedies sought herein.

9. The upshot is that I did not find any basis for this suit as filed. The same is struck out with no order as to costs.

Dated, signed and delivered at Malindi this 14th day of March, 2019.

J.O. OLOLA

JUDGE