



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 3 OF 2017

SAYYED ISMAIL KADIRI.....PLAINTIFF/APPLICANT

-VERSUS-

MWANASHA SALIM HAMAD.....1ST RESPONDENT/DEFENDANT

SHEE HAMISI MWAMWINDI.....2ND RESPONDENT/DEFENDANT

DISTRICT LAND REGISTRAR KWALE.....3RD RESPONDENT/DEFENDANT

RULING

1. The plaintiff vide an application dated 15th March 2017 brought under the provisions of Order 40 of the Civil Procedure Rules and the overriding objectives of the Act seeks the following orders:

(a) Spent

(b) Spent

(c) That a temporary injunction do issue against the 2nd Respondent, his servants, agents and/or employees, that they be restrained from dealing, leasing, constructing, selling, wasting, damaging, intruding, trespassing, developing and/or interfering with the land at Kwale/Majoreni/1502, pending the hearing and determination of this suit.

(d) That the Officer Commanding Station Msambweni Police Station do ensure compliance under the direction of OCPD Msambweni.

(e) That the Respondents be ordered to pay costs of this application.

2. The application is premised on the affidavit of Sayyed Ismail Kadiri. Mr Kadiri deposed that the 1st Respondent using an Order obtained from Kadhi's Court Succession Cause No 108 of 2015 rushed to the Lands registry and secured the registration of the suit property in her name. That he registered a caution on the title which was registered as entry No 8 on the title to secure the title. But to his surprise, the caution was removed without notice to him. That the transfer to the 2nd defendant was fraudulent and against public policy and should not be allowed.

3. The application is opposed by Respondents who filed grounds of opposition dated 18th December 2017. The Respondents pleaded that the application lacks merit and is a waste of the Court's time. The Respondent added that he who comes to equity must come with clean hands. That the suit property was bestowed on the 1st Respondent in Kadhi Court Succession Cause No 274 of 2013 before he sold the same to the 2nd Respondent.

4. The parties argued the application by filing written submissions which submissions I have read and considered. The facts of the case reveal that the 1st Respondent obtained registration into his name using a Court Order emanating from the Kadhi's Court in Succession Cause No 274 of 2013 in the estate of Rashid Ramadhan. The Applicant did not demonstrate to the Court that he has filed an appeal against the said order. Instead he also filed another succession cause in Mombasa being succession cause No 3 of 2016. The latter cause relates to the estate of Sayed Ahmed Kadiri.

5. The green card for the suit plot annexed as **SK 5 (a)** shows Rashid Ramadhan as the registered owner as at 13th February 1984. Sayed

Ahmed Khadir caused to be registered a restriction on the same date (13.2.1984). The said restriction was removed pursuant to the Land Registrar's letter dated 28th November 1995. The Applicant does not explain whether as at 1995 Sayed Ahmed Kadir - deceased was still alive and why he did not challenge the Land Registrar's decision then.

6. Given that no objection proceedings have been shown to have been taken as regards the administration of the estate of Rashid Ramadhan who was the registered owner prior to appointment of 1st Respondent as his legal representative, I find no basis why the injunction should be issued to stop the actions of a duly appointed legal representative. I am thus not satisfied that the Applicant has demonstrated that he has a prima facie case; neither has he shown that the loss if at all is irreparable since he has not made any claim to the land in the prayers contained in the plaint. All he wants is for the Court to make a finding that the removal of the caution was irregular and restoration of status quo at the time the caution was removed. These are administrative issues that the 3rd Respondent can undertake any time if the Applicant's case succeeds.

7. In light of the above, I find the motion dated 15th March 2017 as lacking in merit and hereby dismiss it with costs to the 1st & 2nd Respondents.

Dated, signed & delivered at Mombasa this 7th March 2019

A. OMOLLO

JUDGE