



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 36 OF 2013

TEDDY DAVIS NGALA.....PLAINTIFF

VERSUS

POLA NGALA alias POLA CHARO KANIKI.....DEFENDANT

RULING

1. Before me for determination is a Notice of Motion application dated and filed herein on 17th October 2017. By the said Motion the Defendant-Pola Charo Kaniki prays for a conservatory order to issue barring any sub-division or interference by the Plaintiff of the parcel of land known as Kilifi/Mtondia/1893. In addition, the Defendant prays that any sub-divisions already undertaken by the Plaintiff in regard to the said parcel of land be declared null and void. The Defendant further urges the Court to make Orders and issue directions as to how, when and what part of the said parcel of land is to be sub-divided so as to create the three acres adjudged to the Plaintiff.

2. The application which is supported by an Affidavit sworn by the Defendant is anchored on the grounds: -

a) That on 11th November 2016, this Court directed that the Defendant's said parcel of land be sub-divided and that three acres thereof be transferred to and be registered in the Plaintiff's name.

b) That no directions have been taken as to which part of the said land is to yield the said three acres;

c) That the Plaintiff has unilaterally and without consultation nor involvement of the Defendant invaded the suit property and commenced erecting fences and excavating the land;

d) That the Defendant stands the risk of being rendered destitute unless the orders sought are granted.

3. In response to the application, the Plaintiff/Respondent Teddy Ngala Davis has sworn a Replying Affidavit filed herein on 14th May 2018 wherein he avers that the application is an abuse of the Court process as a similar application was filed by the Defendant and was heard and dismissed.

4. The Respondent avers that Judgment was delivered herein on 22nd July 2014 and the Kilifi County Government Surveyor was directed to curve out three acres from the suit property. That exercise was done and Plot Numbers 2390 and 2391 had since been created. Plot No. Kilifi/Mtondia/2390 measuring 8 acres was registered in the Defendants' name while Plot No. Kilifi/Mtondia/2391 measuring three acres was registered in the Plaintiff/Respondent's name.

5. I have considered the application and the response thereto. I have also considered the Defendant's written submissions in regard thereto.

6. A perusal of the Judgment of Angote J delivered herein on 11th July 2014 reveals that the Kilifi County Surveyor was directed to survey and curve out the three (3) acres out of LR No. Kilifi/Mtondia/1893 within 30 days from the date of the Judgment at the Defendant's costs.

7. It is apparent that after the said decision the decree was extracted and served upon the County Surveyor as directed. In the meantime, the Defendant filed an Appeal in the Court of Appeal and this Court granted a stay of further proceedings herein.

8. As it turned out that Appeal was dismissed for lack of merit by the Court of Appeal on 11th November 2016. The Survey having been done, LR No. Kilifi/Mtondia/1993 was sub-divided and as a result Plot Numbers 2390 and 2391 were created. From a perusal of the record, it is clear that Kilifi/Mtondia/2391 measuring three acres was registered in the Plaintiff's name and a title therefor was issued to him on 14th November 2016.

9. In the circumstances of this case, I find no reason to interfere with the process that was undertaken in accordance with the directions given by this Court.

10. The upshot is that I find no merit in the application dated 17th October 2017. The same is dismissed with costs to the Plaintiff.

Dated, signed and delivered at Malindi this 20th day of September, 2019.

J.O. OLOLA

JUDGE