



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 199 OF 2018**

**ANWAR MOHAMED AHMED.....1<sup>ST</sup> PLAINTIFF**

**AHMED MOHAMED AHMED (suing as the administrator of the estate of**

**Mohamed Ahmed Abderehman).....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MORIS MWITHALI MBAABU.....1<sup>ST</sup> DEFENDANT**

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT.....2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. By their Notice of Motion application dated and filed herein on 22<sup>nd</sup> October, 2018, the two plaintiffs pray for a temporary injunction to issue restraining the Defendants from interfering with the Record of the Land Adjudication and Settlement office, changing names and replacing others in regard to the parcel of land known as Pot No. 203/Mokowe/Lamu County. They also pray for an injunction to restrain the Defendants from encroaching upon, trespassing, fencing off, marking beacons or in any manner interfering with the said property.

2. The application is supported by an affidavit sworn jointly by the two Plaintiffs – Ahmed Mohamed Ahmed and Anwar Mohamed Ahmed and is premised on the grounds: -

**a) That the Plaintiffs are the lawful owners of the said parcel of land;**

**b) That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have secretly deleted the name of the Plaintiffs' father from the records and replaced the same with that of the 1<sup>st</sup> Defendant who has since commenced construction on the property;**

**c) That the 1<sup>st</sup> Defendant has no legal claim or any colour of right over the suit property and the Plaintiffs stand to suffer irreparable loss and damage unless the orders sought herein are granted.**

3. In response to the said application, Moris Mwithali Mbaabu (the 1<sup>st</sup> Defendant) avers that the issues raised by the Plaintiffs pertaining to the suit property are false, untrue, unfounded and baseless. He avers that he purchased the property on 30<sup>th</sup> May, 2008 from one Shadrack Kahindi Kazingu (now deceased). The said Shadrack had inherited that property from his father Kahindi Kazungu Kaingu.

4. The 1<sup>st</sup> Defendant further avers that the suit property was initially referred to as unsurveyed Plot No. 13 Mokowe but was renamed Plot No. 203 upon survey. It is the 1<sup>st</sup> Defendant's case that he has since renovated the only house standing on the suit plot and it is not therefore true that the Plaintiffs have lived on or carried business on his property.

5. On their part, the Director of Land Adjudication and Settlement (the 2<sup>nd</sup> Defendant) and the Honourable the Attorney General (the 3<sup>rd</sup> Defendant) have jointly filed Grounds of Opposition herein dated 5<sup>th</sup> November, 2018 opposing the application on the grounds: -

**1. That the application seeks orders (of) injunction against the Government (the) grant of which is expressly prohibited under Section 16 of the Government Proceedings Act;**

**2. That the Applicants have not met the threshold for granting of an injunction as sought by the applicant;**

**3. That the application contains mere allegations and is not supported by any evidence to support the applicants assertions and (their) alleged interest in the suit plot; and**

**4. That the Application lacks merit and is otherwise an abuse of the court process.**

6. I have perused and considered the application as well as the responses thereto. I have equally perused and considered the written submissions filed herein by the Learned Counsels for the parties.

7. This being an application for interlocutory injunction, the Plaintiffs must satisfy the conditions laid down in the celebrated case of **Giella - vs- Casman Brown & Co. Ltd (1973) EA 358**. Thus the Plaintiffs must demonstrate that they have a prima facie case with a probability of success and that they stand to suffer irreparable harm unless the orders sought are granted.

8. The plaintiff herein assert that they are the beneficial owners of all that property known as Plot No. 203 Mokowe, Lamu. It is their case that they have been in occupation of the property for a long period of time having inherited the same from their father one Mohamed Ahmed Abderehman. They aver that the 1<sup>st</sup> Defendant herein secretly colluded with the 2<sup>nd</sup> Defendant to delete the name of their father from the Records held at the 2<sup>nd</sup> Defendant's office and that subsequently, the 1<sup>st</sup> Defendant has taken over the property and has commenced construction thereon.

9. On the other hand, the 1<sup>st</sup> Defendant asserts that he purchased the suit property in the year 2008 from one Shadrack Kahindi Kazungu and that he has since commenced developing and renovating the sole house erected on the property. He asserts that he has been residing peacefully on the land after the same was allocated to him by the 2<sup>nd</sup> Defendant on 6<sup>th</sup> November, 2012 having made the requisite payments.

10. As it were, it would appear to me that the parcel of land in dispute was previously public land. From the Further Affidavit of the 1<sup>st</sup> Plaintiff filed herein on 19<sup>th</sup> November, 2018, he gives a long history of the parcel of land from the year 1990 to-date. A perusal thereof reveals that even though this was public land, it kept on being sold from one person to the other. The Plaintiffs state that their father bought the same on 29<sup>th</sup> January, 1990 from one Ismail Msembe Abdalla for Kshs.60,000/-.

11. A perusal of the record further reveals that one Ghalib Suleiman Ali also claimed ownership of the land including a building erected thereon. According to the Plaintiffs, the late Ismail Msembe Abdalla who sold the land to their father had rented the house to one Daniel Kazungu. This Daniel Kazungu later claimed to have purchased the property from the said Ghalib Suleiman Ali who the Plaintiffs describe as a trespasser to the land.

12. The said Daniel Kazungu it would appear is the father of the late Shadrack Kahindi Kazungu who the 1<sup>st</sup> Defendant claims to have purchased the parcel of land from on 30<sup>th</sup> May, 2008.

13. From the material placed before me, it is apparent that even though they may have a claim on the suit property, the Plaintiffs have not been in possession and/or occupation thereof for some period of time. They have raised numerous complaints overtime about the same but their claim was rejected and the land was apparently allocated to the 1<sup>st</sup> Defendant/Respondent who is presently in occupation.

14. Given the circumstances herein, I think to issue the orders of injunction sought by the Plaintiffs herein would amount to evicting the 1<sup>st</sup> Defendant from the suit property before this court can hear the parties and properly establish who among the protagonists is duly entitled to occupy and/or possess the same.

15. In the circumstances I decline to grant the orders sought by the Plaintiffs at this stage. The application dated 22<sup>nd</sup> October, 2018 is accordingly dismissed with costs.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2019.**

**J.O. OLOLA**

**JUDGE**