



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC CIVIL SUIT NO. 327 OF 2015**

**BAKARI ALFANI HAMISI.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**GEORGE OJIAMBO OUMA.....1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**THE REGISTRAR OF TITLES.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application dated 7.12.2015 is brought under the provisions of Order 40 and 51 and the provisions of Section 1A, 1B & 3A of the Civil Procedure Rules & Act respectively. The plaintiff/applicant seeks for orders that:

**a) Spent**

**b) That a temporary injunction be issued restraining the defendants by themselves, agents, employees, servants, and/or other persons acting on their behalf from developing alienating, subdividing, selling and/or dealing with parcel of land known as KILIFI/MTWAPA/23 measuring approximately 2 ½ acres and any manner whatsoever transferring interests herein pending the hearing and determination of this suit.**

**c) That costs of this application be provided for.**

2. The applicant gave a narrative on how he acquired the suit plot which he says has been illegally registered in the name of the 1<sup>st</sup> defendant. He annexed a copy of a search showing the title was issued to the 1<sup>st</sup> defendant on 18.11.1996. The pleadings were served via substituted service by placing an advertisement on the standard newspaper of 12<sup>th</sup> April 2017 as evidenced in the affidavit of service on record. The 1<sup>st</sup> defendant has not entered appearance in the suit.

3. The application is opposed by the attorney general on behalf of the 2<sup>nd</sup> & 3<sup>rd</sup> defendants. The 2<sup>nd</sup> & 3<sup>rd</sup> defendants listed the following reasons as grounds why the orders should not be granted:

**i) That the application is misconceived, frivolous, vexatious and an abuse of the process of the Court.**

**ii) The orders sought are untenable and a nullity.**

**iii) Applicant is guilty of laches.**

**iv) That the applicants are the author of their own misfortunes.**

4. The advocates on record agreed to file written submissions but none was filed. I have therefore considered the application on its merits based on the pleadings before Court before granting an order of temporary injunction, the applicant must demonstrate either of the following:

**i) That he has a prima facie case with probability of succeeding.**

**or**

**ii) If the orders sought are not issued he will suffer irreparable loss that cannot be compensated by an award of damages**

**and**

**iii) If in doubt in whose favour the balance of convenience tilts.**

5. In the instant application, the applicant has deposed in his affidavit that he is in occupation of the suit land. He has also annexed correspondence from the government agencies assuring him that the suit land is his (Annexed as **BAH 1 to BAH – 5**). These facts have not been disputed. The facts as presented demonstrates that the applicant has a prima facie case and the balance of convenience tilts in his favour for the prevailing circumstances to be maintained. The 2<sup>nd</sup> & 3<sup>rd</sup> Respondents did not explain why they felt the orders sought are untenable and a nullity. They did not specify how the application is frivolous et al.

6. I am thus satisfied the applicant has reason to seek orders to preserve the suit title from changing hands so that this case is not rendered an academic exercise. Consequently I do grant the application in terms of prayer 3 with an order that each party bear their respective costs of the application.

7. I have also considered the size of the subject matter herein and is of the view that it is a matter that falls within the jurisdiction of the Magistrate's Court. Accordingly I suo moto transfer the file forthwith to Kilifi Principal Magistrate's Court for trial and determination.

**Dated, signed at Mombasa this 25<sup>th</sup> January 2018.**

**A. OMOLLO**

**JUDGE**

**Delivered at Mombasa this 26<sup>th</sup> January 2018**

**C. YANO**

**JUDGE**