



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 132 OF 2017

UKWALA TRADING COMPANY LIMITEDPLAINTIFF

=VERSUS=

1. COUNTY GOVERNMENT OF KWALE

2. COUNTY EXECUTIVE MEMBER (C E C)

(ENVIRONMENT & LAND – IN CHARGE)

3. COUNTY CHIEF OFFICER IN CHARGE OF LAND & ENVIRONMENT

4. KWALE COUNTY PHYSICAL PLANNER.....DEFENDANTS

RULING

1. The plaintiff/applicant has moved the court with his application dated 12th April 2017 seeking the following orders:

i) Spent

ii) Spent

iii) That a permanent injunction do issue restraining the respondents from interfering in whatsoever way with the Applicant's property known as **Land Reference Number KWALE/DIANI S.S/291** pending the hearing and determination of the suit herein.

iv) The mandatory injunction do issue against the Respondents compelling them to lift the deferment issued against the development approval dated 22nd December, 2015 for boundary fencing of **Land Reference Number KWALE/DIANI S.S./291**.

v) Costs of this application be provided for

2. The application is supported by the grounds listed on its face and an affidavit sworn by Praful Kumar Premchand Savla. From the onset, prayer no. 3 cannot be granted because it is pleaded to seek permanent orders/final orders at an interlocutory stage. Therefore for my consideration is only prayer (4) for Mandatory Injunction and (5) on costs of the application.

3. The principles to be considered on whether or not to grant Mandatory Injunction was set out by the Court of Appeal in the case of Washington Okeyo vs Kenya Breweries Limited (2002) to include the following:

- i) In special circumstances
- ii) Simple and clear case that ought to be decided at once
- iii) The defendant attempting to steal a march on the plaintiff.

4. In this instant application, the applicant argues that it is the registered owner of the suit land Kwale/Diani S.S/291 and annexed a search certificate to prove. It also annexed approval from NEMA (E. I. A certificate) for the building of the perimeter wall and notification of approval of the development issued by the Respondents. However in a turn of events, the Respondents issued a letter dated 15. 3. 2016 suspending the development approvals on the basis that a dispute has been registered over the suit land hence the applicant should defer its development until the same is resolved.

5. In the replying affidavit sworn by Mr. Ali Abdalla Bedzuma, the Kwale County Physical planner, he deposed that he relied on copies of the title deed and the search certificate presented while approving the development plans. That in March, he became aware that there was physical conflict between the plaintiff and the local community protesting the construction of the perimeter wall. That in the letter copied to him by the local community was annexed adjudication records showing the plot was demarcated for public utility purposes. Consequently the County government referred the matter to the National Land Commission for investigation and guidance. That it is on account of this complaint that they deferred the approvals that were earlier issued. Mr. Ali annexed to his affidavit a copy of the letter of the complaint by the local Community dated 30. 5. 16 and 14. 3. 2016. He also annexed a copy of the adjudication records showing the suit plot was demarcated as 1st shopping centre. Lastly annexed was the National Land Commission letter dated 19. 2. 2016.

6. The applicant gave a narration on how it acquired the suit land from United Insurance Limited in May 2014. It also annexed a title deed issued to the Insurance Company on 16th July 1997 who apparently was the 5th owner according to the copy of records also annexed to the supporting affidavit. The plot was initially registered in the names of settlement fund trustees as at 10. 3. 1992 before the first transfer made on 10. 6. 92. From the copy of records, no restriction has ever been registered on the title. Secondly, while recorded on the adjudication register as a shopping center it was not clearly stated that the shopping center was demarcated as commercial or communal.

7. The local community or the National Land Commission is yet to commence any proceedings to cancel the title of the applicant. Nothing has been shown to this court whether the National Land Commission has conducted any investigations from 19th February 2016 to the date of filing this suit on 13th April 2017 which is one year later. It therefore means the applicant is kept waiting without knowing the outcome or the resolution of the said dispute and information. In the process the applicant suffers inconvenience and loss as he cannot enjoy the use and occupation of his land which he acquired for valuable consideration and which loss he may never recover as there is no one directly challenging his title.

8. In conclusion, I am satisfied that this is a clear case that can be summarily dealt with. In the event the National Land Commission in future finds the suit land was preserved for public utility purpose as alleged the wall can always be demolished if need be or necessary accesses can be created for use of the plot while it is wall fenced. For this reason, I do grant prayer (4) of the motion. I also award the applicant costs of the application.

Dated and Delivered at Mombasa this 16th Day of January 2018

A. OMOLLO

JUDGE