

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO 65 OF 2011

JAMES PETER KINYUNGU MBANDI.....PLAINTIFF/RESPONDENT

VERSUS

NGUMBAO GODA DZOMBO AND 72 OTHERS.....DEFENDANTS/APPLICANTS

RULING

1. On or about 5th October 2016, the Plaintiff's suit was dismissed for non-attendance and want of prosecution. By an application dated 7th February 2017, the Plaintiff applied to have the proceedings set aside and to have his suit reinstated for full hearing and determination.

2. On 19th September 2017, having heard the said application, I allowed it on condition that the Plaintiff shall proceed to fix the matter for hearing and to prosecute his case within 90 days from the date of the Ruling.

3. Rather than proceed to fix the same for hearing, the Plaintiff proceeded on 17th October 2017 to file the present application before me dated 12th October 2017. In this application, the Plaintiff is seeking Orders:-

2. That this Court be pleased to order that the temporary injunction issued by the Court on or about 22nd August 2012 has lapsed;

3. That the Land Registrar Kilifi be directed to register the transfer documents dated 8th May 2012 and presented for registration on 6th August 2012 whose stamp duty has been paid for (sic);

4. Any other order(s) that this Court may deem just and expedient to make; and

5. That the costs of this application be provided for.

4. I have considered the Application and the Replying Affidavit of Khamisi Haro Deche sworn on 30th October 2017 on behalf of all the Defendants in this suit.

5. In my Ruling of 19th September 2017 aforesaid, I observed that this suit in its entirety involves parties who both claim that a right to own property and to peaceful, exclusive and quiet enjoyment thereof has been infringed. For those reasons, I deemed it appropriate that each party be afforded an opportunity to present their case to enable this Court to make a determination of all the issues in controversy once and for all.

6. Nothing has changed since I made those observations. The invitation by the Plaintiff/Applicant to lift the injunction and to order the Registrar to register the transfer documents is nothing but a ploy to circumvent the Orders that I gave when I reinstated their suit on 19th September 2017. It is brought in bad faith and is a waste of this Court's time.

7. The same is disallowed and dismissed with costs to the Defendants.

Dated, signed and delivered at Malindi this 3rd day of May, 2018.

J.O. OLOLA

JUDGE