



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE NO 141 OF 2017**

**WILSON KAINGU CHARO**

**MARGARET TABU KARABU.....PLAINTIFFS/APPLICANTS**

**VERSUS**

**HARRISON MANGI.....DEFENDANT/RESPONDENT**

**RULING**

1. Before me for determination is a Notice of Motion Application dated 29<sup>th</sup> June 2017. The two Plaintiffs seek orders of injunction to restrain the Defendant either by himself, his agents, or servants from trespassing, constructing on, selling, transferring, leasing, sub-dividing, charging and/or in any way interfering with all that property comprised in Title Number Kilifi/Ngerenyi/564 pending the hearing and determination of the suit herein.
2. The application is supported by the annexed affidavit of Wilson Kaingu Charo (the 1<sup>st</sup> Plaintiff) sworn on 29<sup>th</sup> June 2017 and is premised on a number of grounds which may be summarized as follows:-
  - a) That on or about August 2014, the Respondent trespassed into the suitland and without any colour of right began to build structures thereon;*
  - b) The Plaintiffs have since obtained a Certificate of Confirmation of grant for the Estate of their deceased father Charo Dola Kazungu in whose name the property was formerly registered and are now desirous of proceeding to secure the same having now been registered as the owners thereof.*
  - c) That the Respondent has been taking advantage of the Plaintiffs' illiteracy to conceal his illegal activities and there is a real and imminent threat that the Respondent is on the verge of disposing the suit property to a third party by way of sale.*
3. In a Replying Affidavit filed herein on 31<sup>st</sup> August 2017, Harrison Mangi (the Defendant) refutes the Plaintiffs' claim that the suit property is registered in their name. It is his case that he has never dispossessed the owner of the suit property nor does he harbor any intention of forcibly selling the suitland.
4. The Defendant avers that he is the lawful owner of the suit property having bought the same from the said Charo Dola Kazungu in the year 1995 with the full consent of the entire family including the applicants herein. He further avers that having purchased the 5 acres of land, he commenced developments thereon and he now has mature trees such as mangoes, coconuts and cashew nut which are now more than 22 years old. In addition the Defendant states that he built a residential house on the land where he now resides with his family.
5. I have considered the application and the response thereto. I have equally considered the submissions filed herein by the Learned Advocates for the Plaintiffs/Applicants.
6. From the material placed before me, it is evident that by a Sale Agreement dated 11<sup>th</sup> April 1995, one Kahonzi Charo Kazungu sold 5 acres of land from Plot No. 564 Ngerenyi to the Defendant herein for a sum of Kshs 140,000/-. The said agreement marked as annexure HM 3(a) in the Defendant's Replying Affidavit shows that the seller had discussed and agreed with members of his family to sell the land. The said agreement is signed by one Thabu Karabu and Kaingu Charo.
7. A further agreement (annexture HM 3(b)) shows that for purposes of obtaining money to process the title deed, the same family agreed to sell one more acre to the Defendant for a sum of Kshs 64,000/-. While the second agreement is not clear as to whether that sum of money was paid in full or at all, I note that it is not contested by the Plaintiffs that the Defendant subsequently moved into the subject parcel of land

and has occupied the same to-date.

8. A perusal of the two agreements leaves little doubt that the father of the 1<sup>st</sup> Plaintiff (now deceased) entered into some arrangement to sell the land to the Defendant. Both agreements are indeed signed by persons identified as family members and whose names conform to those of the 1<sup>st</sup> Plaintiff and also the 2<sup>nd</sup> Plaintiff herein who is the widow to the deceased. Arising from the foregoing, it is easy to accept the Defendant's contention that he bought the 5 acre piece of land in 1995 from the late Charo Dola Kazungu with the full consent of the entire family including the applicants. It is indeed telling that the Plaintiffs/Applicants have not said anything to deny the existence of the two agreements and/or the fact that they signed the same.

9. Given the fact that it is not denied that the Defendant is presently in occupation of the subject parcel of land, I think the balance of convenience tilts in favour of the Defendant who is more likely to be inconvenienced if the orders sought herein were to be granted.

10. The upshot of all this is that, I do not find merit in the Plaintiff's application. The same is dismissed with costs to the Defendant.

**Dated, signed and delivered at Malindi this 28<sup>th</sup> day of June, 2018.**

**J.O. OLOLA**

**JUDGE**