



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CONSTITUTIONAL PETITION NO. 5 OF 2017

SALIM ABDALLA SALIM JUMA.....PEKTITIONER

-VERSUS-

THE ATTORNEY GENERAL & 4 OTHERS.....RESPONDENTS

RULING

1. The notice of motion dated 31st July 2017 brought under Rule 13, 23 and 24 of the Constitution of Kenya(Practice & Procedure Rules) seeks orders that:

1. Spent

2. Spent

3. Spent

4. That an injunction be issued against the 2nd, 3rd and 4th Respondents by themselves, servants, agents or any persons acting under their authority from entering, constructing and or dealing with the parcel of land No. 2398/II/MN pending the hearing and determination of the petition.

5. Cost of this application be provided for.

2. The motion is premised on the grounds inter alia that; the petitioners are the registered owners of the suit parcel No 2398/11/M.N. Secondly that the 2nd & 3rd Respondents refused to hear the petitioners claim and they instead are making an award to different people contrary to the provisions of article 40 (3) & 47 (1) of the Constitution. The application is supported further by the several affidavits of the 1st Petitioner sworn on 31.7.2017, further affidavit sworn on 6.12.2017 and further supplementary affidavit sworn on 26.6.2018.

3. The application is opposed by each of the replying affidavits of the 2nd and 5th Respondents. The 5th Respondent also filed grounds of opposition dated 5.3.2018. In brief the 2nd Respondent through the affidavit of Daniel Mbuleti deposed that everyone whose land was to be acquired was invited for hearing through a publication made in the gazette notice of 17.2.2017 annexed as **DM 2**. That the Petitioners did not present any evidence of their ownership of the suit land during the hearings.

4. The 5th Respondent via the affidavit of Sofia Kassim Salimu is disputing the claim by the Petitioners over the parcel No MN/II/2398. She deposes that through a deed of settlement dated 2nd March 2009, the dispute over the Wakf properties of Salim Juma Muhunzi was resolved by appointment of new trustees. That pursuant to the said deed of settlement, the suit property was allotted to Kassim Salim Juma Muhunzi and all his beneficiaries who does not include the Petitioners. That the petitioners fall under beneficiaries allotted to benefit in respect of Msa/Block XII/30 & 145 respectively. The 5th Respondent proceeded to annex certificate of confirmation of grant in respect of the estate of Kassim Salim Juma issued to Hadija Kassim (5th Respondent) and Zuhura Kassim Salim.

5. In their further supplementary affidavit dated 26.6.18, the Petitioners admitted the contents of paragraphs 5 & 6 of the 5th Respondent's affidavit. A paraphrase of paragraph 6 of the 5th Respondent's affidavit states thus:

“That upon the demise of the trustees, a dispute arose among the beneficiaries & the properties under the aforesaid Wakf deed were hence forth managed by the Wakf Commission until the 2nd day of March, 2009 when my grandfather Kassim Salim Juma Muhunzi (deceased) and the Petitioners executed a deed of settlement and in Clause 8 therefore contained a schedule of distribution of the

properties as hereunder provided vis:

SCHEDULE

- a. Kassim Salim Juma Muhunzi and all the beneficiaries shall take over the income from Plot No. 2398 Section VI Mainland North.
- b. Salim Abdullah Salim Juma Muhunzi and all his beneficiaries shall take over the income from Mombasa/Block XII/30.
- c. Badi Bin Juma Bin Salim and all his beneficiaries shall take over the income from Mombasa/Block XII/145.

6. The petitioners did not annex any evidence to contradict the mode of sharing of the Wakf properties as contained in the schedule of the deed of settlement. They proceeded to admit this position on 26.6.2018. If they wish to contest the certificate of grant of letters of administration annexed as **C – II** issued to the 5th Respondent and Zuhura Kassim that also distributed the suit property to the persons listed under the grant they are at liberty to do so. However unless the said grant is revoked and pursuant to the terms of the deed of settlement dated 2.3.2009, I find no basis upon which I can stop the 2nd and 3rd Respondents from making compensation payments to the 5th Respondent in respect of the portion of L. R No MN/II/2398 compulsorily acquired.

7. The Applicants have failed to demonstrate that they have an interest or right over the suit property and that such interest is likely to be violated. I am thus not persuaded to grant the orders sought in their application. I find that the same lacks merit and is hereby dismissed with costs to the 2nd & 5th Respondents.

Dated, signed & delivered at Mombasa this 16th October 2018

A. OMOLLO

JUDGE