



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 268 OF 2016

IBRAHIM KATANA MZUNGU.....1ST PLAINTIFF

NICODEMUS SULUBU KATANA.....2ND PLAINTIFF

MZUNGU TAABU JUSTUS.....3RD PLAINTIFF

VERSUS

KAHINDI KENNETH SAMUEL.....1ST DEFENDANT

RENSON KAMBI.....2ND DEFENDANT

THOYA MRAMBA.....3RD DEFENDANT

PHILIPH MWAMURE.....4TH DEFENDANT

JULIUS ANGORE.....5TH DEFENDANT

RULING

- This suit was filed on 10th October 2016. The three Plaintiffs pray for Judgment against the five Defendants jointly and/or severally for:-
 - An order of permanent injunction restraining the Defendants, their servants and/or agents from alienating and/or interfering and trespassing into the Plaintiff's un-surveyed suit property situated at Bunyale.*
 - Costs of the suit; and*
 - Any other relief that the Court deems fit to grant.*
- Filed simultaneously with the suit is a Notice of Motion application of even date in which the Plaintiffs seek temporary orders of injunction to restrain the defendants as sought in the main suit pending the hearing and determination of the suit.
- In a Replying Affidavit to the said application filed herein on 25th April 2017, the 4th Defendant/Respondent PhilipMwamure swears inter alia that the suit premises falls within Baricho Wakala Adjudication Section within Magarini Sub-County in Kilifi. On the same date they filed the Repying Affidavit, the 2nd, 3rd, 4th and 5th Defendants took out a Notice of Preliminary Objection stating as follows:-

“TAKE NOTICE that the 2nd, 3rd, 4th and 5th Defendants herein shall at the hearing of the Plaintiff's Notice of Motion application dated 10/10/2016 or the main suit or as the case may be raise a Preliminary Objection against the entire suit upon the following grounds:-

 - 1. That this Honourable Court lacks the requisite jurisdiction to entertain both the Application and the suit by dint of Section 30 of the Land Adjudication Act Cap 284 Laws of Kenya.***
- As at the time when the date for the Ruling on the Preliminary Objection was set, the Plaintiff had neither responded thereto nor filed any submissions thereon.

5. Section 30(1) of the Land Adjudication Act, Cap 284 of the Laws of Kenya provides that:-

“Except with the consent in writing of the adjudication officer, no person shall institute, and no Court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register has become final in all respects under Section 29(3) of this Act.”

6. As I observed hereinabove, the Defendants objection is based on the averment contained at Paragraph 7 of the 4th Defendant’s Replying Affidavit in which he avers as follows:-

“7. That the suit premises falls within Baricho Wakala Adjudication Section within Magarini Sub-County, Kilifi County (Annexed hereto and marked as PM3 is a notice declaring the area an adjudication area in accordance with the Land Adjudication Act, Cap 284 Laws of Kenya).

7. As it were, I have gone through all annextures to the said Replying Affidavit sworn and filed herein on 24th April 2017. I have equally gone through all other documents filed by the parties herein. I was however unable to locate the said annexure PM3 referred to and/or any other document declaring the area under dispute an adjudication section.

8. That being the case, the Preliminary Objection dated 24th April 2017 and filed herein on 25th April 2017 has no legs to stand on. The same is dismissed with costs.

Dated, signed and delivered at Malindi this 11th day of October, 2018.

J.O. OLOLA

JUDGE