



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 203 OF 2015

CONSOLIDATED WITH ELC NO. 194 OF 2015

STEPHEN MUTURI WANGONDU.....PLAINTIFF

VERSUS

JAPHET NOTI CHARO.....DEFENDANT

RULING

1. By a Notice of Motion application dated 31st March 2017, Japhet Noti Charo prays for an order of status quo preserving the suit property pending the hearing and determination of this suit. The application is premised on the grounds:-

i) That the Court dismissed the Applicant's application seeking an order of injunction pending the hearing and determination of the suit;

ii) That the Court did not grant any rights to any party at the time of delivery of that Ruling;

iii) That the Respondent has now employed a number of men to put up a perimeter wall round the suit property; and

iv) That there is therefore an urgent need to preserve the suit property pending the determination of the suit.

2. In a Replying Affidavit filed herein on 15th June 2017, the Respondent Stephen Muturi Wangondu contends that this application is brought in bad faith and that it is malicious. It is the Respondent's case that the application was filed purposefully to delay the trial herein.

3. The Respondent further avers that this Court already granted the status quo in its orders of 3rd February 2017 which restrained the Defendant/Applicant from interfering with the suit property. It is therefore the Respondent's case that the application before the Court is an abuse of the Court process and that the same ought to be dismissed and the Applicant be condemned to pay punitive costs to be assessed by the Court.

4. I have considered the application and the response thereto. I have equally considered the submissions filed by the respective parties thereon.

5. From the record, it is apparent that this matter was consolidated with Malindi ELC Case No. 194 of 2015. In the said ELC No. 194 of 2015, the Applicant herein filed an application dated 16th October 2015 seeking orders of injunction against the Respondents herein. At the same time, the Respondent filed herein another application dated 9th November 2015 seeking near similar injunctive orders against the Applicant herein.

6. Those two applications were considered by the Honourable Angote J and on 3rd February 2017 he allowed the Respondent's application dated 9th November 2015 and dismissed the Applicant's application dated 16th October 2015.

7. The Applicant has now filed the present application in which he now seeks an order for the preservation of the status quo on the basis that the earlier ruling never granted any party any rights.

8. In my considered view, the present application is nothing but an abuse of the Court process. The Applicant is fully aware that there were orders of injunction which were granted on the basis that the Respondent had shown a prima facie case that he had a title and was therefore

entitled to continue using the suit premises without any interference from the Applicant pending the hearing and determination of the suit. Those orders remain and subsist. They have neither been varied nor set aside. To grant any other orders herein would in my view create confusion and disorder.

9. The upshot is that I find no merit in the application before me dated 31st March 2017. The same is dismissed with costs to the Respondents.

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

J.O. OLOLA

JUDGE