



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 83 OF 2016

NATHAN MKALA..... PLAINTIFF

=VERSUS=

1. KAVIHA KIKOPI

2. STEMBO KAVIHA KIKOPI.....DEFENDANTS

R U L I N G

1. The Plaintiff has filed an application dated 12th April, 2016 in which he is seeking for the following orders:

(a) THAT pending the hearing and determination of the suit herein, orders of injunction do issue restraining the defendants whether by themselves, family members , agents, servants, employees and indeed all others who may be claiming through them, including purported purchasers or lessees, from entering into, cultivating, mining or excavating therein and removing any earth material or in any other manner whatsoever interfering with the plaintiff's otherwise peaceful possession of the unregistered suit portion of land situate at Sabaki Village of Malindi Location within Malindi Sub-county, bordering the Kikopi family to the north, Ton Saba to the east, Magabi to the west and Stembo, Philip and Ngala to the south.

(b) THAT the respondents do bear the costs of this suit.

2. The Application is premised on the grounds that the Applicant is the beneficial owner of the suit property; that the Defendants have started excavating marrum and other construction material from the suit property and that the Defendants' activities on the suit property will alter the character of the property.

3. The Applicant has deponed that he purchased the suit property from one Mramba Taura on 5th December, 2009 for Ksh 100,000 and that the Defendants are an extended family of the said Mramba Taura who is now deceased.

4. According to the Applicant, he settled on the suit property with his family for four years before he retreated to Taita and that the Defendants have no right to sell any part of the suit land.

5. In response, the 1st Respondent deponed that he is aware of the agreement of sale that was made between the Plaintiff and Mramba Taura; that the suit property is a portion of a large tract of unregistered land measuring approximately 20 acres and that the land has been owned by his immediate family from time immemorial.

6. It is the 1st Defendants' case that the father of Mramba Taura, who is his step brother, has never owned the land; that he had allowed Mramba Taura, who is his nephew, to cultivate the suit property and that the Defendants have not exhausted marrum deposits on the other portions of land.

7. In his Further Affidavit, the son of Mramba deponed that the Plaintiff bought 3 acres from the late Mramba Taura; that the suit property is part of the land belonging to Kikopi family and that his father obtained the consent of the elders before he sold the land to the Plaintiff.

8. I have considered the submissions that were filed by the advocates.

9. It is not in dispute that the suit property formed part of the land belonging to the Kikopi family.

10. It is also not in dispute that the late Mramba Taura, who sold the suit property or a portion thereof, was the nephew of the 1st Defendant. Consequently, the said Mramba Taura was entitled to a portion of land belonging to his father under the Giriama customary law.

11. Although the court cannot at this particular stage state with certainty that the suit property is indeed the land that Mramba Taura inherited from his father under customary law, the said land should not be wasted pending the hearing and determination of whether indeed the late Mramba Taura is the one who was entitled to the suit property before he sold it to the Plaintiff.

12. In view of the fact that the Plaintiff has produced evidence showing that he purchased land from Mramba Taura in the year 2009, he will suffer irreparable damage that cannot be compensated by damages in the event that he succeeds in his suit unless the injunctive order is issued.

13. For those reasons, I allow the Application dated 12th April, 2016 as prayed.

Dated, signed and delivered in Malindi this 3rd day of February, 2017.

O. A. Angote

Judge