



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 117 OF 2013

MOHAMED OSMAN NOOR.....PLAINTIFF

=VERSUS=

1. ROBERT SHUME

2. JONATHAN NGAMBA.....DEFENDANT

R U L I N G

1. The Application before me is the one dated 10th, June 2016. In the Application, the Plaintiff is seeking for the following orders:-

(a) THAT this Honourable Court be pleased to strike out the names of the 1st and 2nd Defendants from these proceedings.

(b) THAT the costs of this Application be provided for.

(c) THAT this Honourable Court be pleased to make any or further order as it may deem just and expedient in the circumstances.

2. The Application is premised on the grounds that the Plaintiff has never served the Defendants with the pleadings; that the Defendants only learnt of the existence of the suit in 2015 and that the Defendants have been wrongly sued in this matter.

3. According to the deposition of the 2nd Defendant, they have never occupied or trespassed on the Plaintiff's land and that it is not true that they have obstructed surveyors from carrying out sub-division of the land.

4. In response, the Plaintiff deponed that the Defendants were duly served with Summons to Enter Appearance on 6th July, 2013; that on 18th July, 2013, the Applicant appointed the firm of Richard Otara to represent them and that on 23rd July, 2013, the 2nd Defendant swore an Affidavit on his own behalf and on behalf of the 1st Applicant.

5. The Plaintiff further deponed that in their Affidavit, the Defendants alleged that the suit property is their ancestral land and that they were cultivating the land.

6. In his Further Affidavit, the 2nd defendant insisted that he has never occupied the Plaintiff's land and that they were only aware of ELC No. 144 of 2011 where they had been sued by one Samson Kazungu Kalume.

7. The advocates filed brief submissions which I have considered.

8. The Defendants/Applicants have not denied that Richard O. & Co. Advocates are their advocates. The Defendants have also not denied that indeed they instructed the said firm to enter appearance for them. The said Memorandum of Appearance was filed by the firm of Richard & Co. Advocates on 16th July, 2013.

9. Indeed, the 2nd Defendant filed a Replying Affidavit in response to the Plaintiff's Application for injunctive orders. The said Replying Affidavit was sworn on 22nd July 2013 and filed on 23rd July, 2013.

10. It is therefore obvious that the Defendants were aware of this suit. Indeed, in the Replying Affidavit, the Defendants did claim that the suit property is their ancestral land.

11. In their Affidavit, the Defendants referred to Malindi ELC no. 144 OF 2011 in which they had been sued by a different person.

12. In view of what I have stated above, it follows that the Defendants were all along aware of this suit. The Defendants were duly served with the pleadings and they instructed an advocate who entered appearance for them.

13. The Defendants also opposed the Plaintiff's Application for adjournment and deponed that the suit property is their ancestral land. They cannot therefore now turn around and depone that they have never had any interest in the suit property.

14. For the reasons I have given above, I find that the Defendants were duly served with the pleadings herein. The issue of whether the Defendants still have an interest in the suit property, or whether they trespassed on the land can only be determined after viva voce evidence has been given.

15. Consequently, this court dismisses the Defendants' Application dated 10th June, 2016 with costs.

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

O. A. Angote

Judge