



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 95 OF 2016

SHAHZID AHMED YUSUF.....PLAINTIFF/APPLICANT

=VERSUS=

THE COUNTY GOVERNMENT OF KILIFI...DEFENDANT/RESPONDENT

R U L I N G

1. The Application before me is the one dated 26th April, 2016, in which the Plaintiff is seeking for the following orders:-

(a) THAT the Honourable Court does issue a temporary injunction restraining the Respondent by itself, employees and/or agents from arresting the Applicant by himself, his employees and/or agents as they undertake construction on PLOT NUMBER 5054/116/KILIFI TOWNSHIP situated at Kilifi town and further restraining the Respondent undertaking any works whatsoever or interfering with any construction that will be ongoing on the above said parcel of land and from any other manner whatsoever and whoever from interfering or blocking the Applicant's activities and operations thereon pending the hearing of this Application interparties.

(b) THAT in the alternative and without prejudice to the foregoing, the Honourable Court does allow the Applicant to continue with his construction and at the same time issue Orders prohibiting any arrests on the person of the Applicant, his employees and/or agents as they continue with construction on plot number 5054/116/Kilifi Township situated at Kilifi town pending the hearing and determination of this application inter-partes.

(c) THAT, the costs of this application be in the cause.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he authorised his brother, Imran Mohamed Yusuf, to act on his behalf in the process of the registration of the Certificate of Title for plot number 5054/116/Kilifi Township.

3. It is the Plaintiff's deposition that he obtained all the necessary approvals including the approval from NEMA and the Respondent to construct on the suit land; that he further received approvals from the National Construction Authority and that on 21st March, 2016, the Defendant informed him to stop any construction on the suit land.

4. In response, the Chief Officer of the Department of Lands, Energy, Housing and Physical Planning of

the Respondent deponed that the Plaintiff has never obtained any approval from the County Government of Kilifi; that if any approval was granted then the same is irregular and that the Applicant has admitted in his Affidavit about the said irregularity.

5. According to the Applicant, the approval from the Department of Lands dated 19th November, 2015 is irregular because the procedure for donating power of attorney was never followed and that the approval of the National Construction Authority was granted on 5th April, 2016 after the notice requiring Mr. Imran Mohamed to stop construction had been given.

6. It is the Defendant's case that the Change of User Application was neither submitted nor approved and that every licence or approval issued can be revoked if the conditions set down in the approval or licence are not adhered to or if the licence was irregularly obtained.

7. I have considered the submissions and authorities that have been filed by counsels.

8. The Plaintiff has annexed a grant on his Supporting Affidavit showing that he is the registered proprietor of L.R. No. 5054/16.

9. The Plaintiff has also annexed a document from the National Environment Management Authority dated 21st January, 2016 showing that the Plaintiff was issued with an EIA licence No. NEMA/EIA/PSL/1202.

10. Annexed on the Plaintiff's Affidavit is also a letter by the Defendant's Lands Energy, Housing & Urban Development Chief Officer dated 19th November, 2014 approving developments on Plot No.5054/116 Kilifi Township.

11. The letter by the Defendant approving development on the suit property was addressed to the Plaintiff's brother, Imran Mohamed Yusuf.

12. In my view, it does not matter that the approval was addressed to the Plaintiff's purported agent and not the Plaintiff. The bottom line is that the Defendant, through its recognised agent, approved the construction of a multi-purpose hall and a residential block on the suit property on 19th November, 2014.

13. The approval letter by the Defendant was on condition that the purported development is approved by relevant government departments. The Plaintiff was also required to secure the Change of User.

14. The Plaintiff has exhibited the Application for Change of User for "proposed extension of user from commercial (Lodge and Hotel) to include residential use (bedsitter)". Indeed, special condition number 5 of the grant shows that "the land and buildings shall only be used for lodge and hotel only."

15. There is no evidence before me to show that the change of user from "lodge and hotel" to a "hall and residential use" was ever obtained by the Plaintiff or his agent.

16. The evidence before the court shows that by the time the Defendant issued its notice of 21st March, 2016 to stop construction, the Plaintiff had not obtained the approval of the National Construction Authority to develop the suit property. The letter of approval by the National Construction Authority was granted on 5th April, 2016, a month after the Defendant served the Plaintiff with a notice stopping him from proceeding with the alleged construction.

17. In the absence of the approval for Change of Use, and in view of the belated letter from the National Construction Authority, I find that the Plaintiff has not established a prima facie case with chances of success.

18. For those reasons, I dismiss the Application dated 26th April, 2016 with costs.

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

O. A. Angote

Judge