



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 145 OF 2014 (O.S)

IN THE MATTER OF: PLOT NO. MAJAONI/BLOCK 54A/7

AND

IN THE MATTER OF: APPLICATION FOR DECLARATION THAT PLAINTIFF/APPLICANT

HAS OBTAINED OWNERSHIP OF SIX DECIMAL ZERO (6.0) HECTARES

OF THE ABOVE SAID LAND BY WAY OF ADVERSE POSSESSION

BETWEEN

HUSSEIN ABDALLA YAA.....PLAINTIFF/APPLICANT

AND

SIMEON GALI KAZUNGU.....DEFENDANT/RESPONDENT

RULING

1. In the Application dated 18th December, 2014, the Plaintiff is seeking for the following orders:
 - a. That the Defendants/Respondents herein, be committed to civil jail for a period of six (6) months for being in contempt of the Order of this Honourable Court made on 20th August, 2014.*
 - b. That the Defendants/Respondents be summoned to appear before court to show cause why they cannot purge the contempt.*
 - c. That costs of this Application be awarded to the Plaintiff/Applicant in any event.*
2. The Application is supported by the Affidavit of the Plaintiff who has deponed that the court issued orders on 20th August, 2014 which are still in force; that the said orders were served on the 1st Defendant on 21st August, 2014 and that the 1st Defendant in disregard of the order of the court sub-divided the suit property to create 50 sub plots which he sold to the 2nd Defendant.
3. That the 2nd Defendant, while aware of the said orders caused the Ministry of Agriculture to issue it with an authority letter to cut down trees on the suit premises.
4. It is the Plaintiff's case that although the Defendants are aware of the orders of the court, they have continued to disobey the said orders.

5. The suit as against the Third Party, Nairobi Business Promotions Ltd, was withdrawn by the consent of the parties on 8th July, 2015. The said consent was filed in court on 9th July, 2015.
6. In its Replying Affidavit, the Director of the said Third Party deponed that the Defendant sub-divided the suit property way before the injunctive order was made; that the suit property was sub-divided on 14th August, 2014, and that due to the said sub-division, the orders of 20th August, 2014 were vacated and replaced by the orders of 19th November, 2014.
7. The Defendant did not respond to the Application.
8. I have considered the brief submissions that were filed by the Plaintiff's advocate.
9. It is not in dispute that on 20th August, 2014, the court issued temporary injunctive orders as against the Defendant restraining him or his agents from sub-dividing or alienating the suit property.
10. The Plaintiff's case is that despite being served with the said order, the Defendant sub-divided the suit property into 50 plots and transferred them to a Third Party. The said Third Party went ahead to clear the suit property for the purpose of developing the land.
11. The Affidavit by the purported person who purchased the suit property is that the suit property was sub-divided way before the orders of 20th August, 2014 were granted.
12. The Plaintiff in this matter has not controverted the assertion that the suit property was sub-divided on 14th August, 2014, which was before the court issued its orders on 20th August, 2014.
13. The Plaintiff has also since withdrawn its claim as against the party who is said to have cleared the trees from the suit property.
14. In the absence of evidence to show that the Defendant sub-divided the suit property and transferred the same during the substance of the orders of 20th August, 2014, I find that the Plaintiff has not established its claim for the committal of the Defendant for contempt of court.
15. For those reasons, I dismiss the Application dated 18th December, 2014 with costs.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O. A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J. O. OLOLA

JUDGE