



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**

**CONSTITUTIONAL PETITION NO. 15 OF 2016**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL FREEDOMS UNDER ARTICLES 19, 20, 21, 22, 23, 28, 40(3), 43 (1) (B) AND 259 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF VIOLATION OF THE CONSTITUTION PARTICULARLY ARTICLE 10, 67(2) (E)(V) AND 68(C)(V) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF VIOLATIONS OF SECTION 13 OF THE KENYA AIRPORTS AUTHORITY ACT, CHAPTER 395 OF THE LAWS OF KENYA**

**AHMED MOHAMED OBO.....PETITIONER**

**VERSUS**

**KENYA AIRPORTS AUTHORITY.....RESPONDENT**

**RULING**

1. In the Respondent's Notice of Preliminary Objection dated 29<sup>th</sup> August, 2016, the Respondent has averred that the Petition is incompetent and bad in law; that the Petitioner does not have the authority of the other twenty four (24) Petitioners to bring the Petition and that the annexed title document was issued to the Respondent.
2. According to the Respondent, the Petition is otherwise an abuse of the court process, a similar suit having been filed by the Petitioner involving the same cause of action; that this Petition was filed after the Petitioner failed to obtain injunctive orders in Malindi ELC No. 78 of 2014 and that the Petition is in total breach of the public interest involved in the matter.
3. The Preliminary Objection proceeded by way of written submissions which I have considered. I have also considered the authorities on record.
4. The only issue that I am supposed to deal with is if indeed the filing of the Petition is an abuse of the court process.
5. In the Petition, the Petitioner has averred that him together with 24 others are the owners of land known as Portion No. 21 Lamu registered as C.R 35747; that the Respondent had agreed to compensate them for the acquisition of the suit land and that the Respondent disregarded the said promise and offered to

compensate them for the crops and buildings that are on the land.

6. In the Petition, the Petitioner has averred that although him and the other 24 individuals obtained a temporary injunction in Malindi ELC No. 78 of 2014, the said orders were not confirmed on technicalities.

7. The reliefs that the Petitioner is seeking are conservatory orders restraining the Respondents from evicting him together with 24 others from the suit property; an order directing the Respondent to compensate him and 24 others and declaration that by evicting them, the Respondent is violating the Constitution.

8. In his Supporting Affidavit, the Petitioner has annexed copy of the grant for portion number 21. The said grant was registered in favour of the Respondent on 14<sup>th</sup> June, 2002.

9. The Petitioner has also annexed the Minutes of the several meetings that were held between the Respondent and other people claiming the suit property, the letter of allotment that was issued to him and the Ruling of this court in Malindi ELC No. 78 of 2014.

10. In the Ruling of this court in Malindi ELC No. 78 of 2014, this court considered the Application that had been filed by the Petitioner and 24 other Plaintiffs.

11. In the Application, the Plaintiffs sought for injunctive orders against the Respondent in respect to the suit land. The issues that the Plaintiffs raised in the said suit are the same issues that have been raised in the current Petition: that they should be compensated for the suit land before they can vacate.

12. In the Ruling of 12<sup>th</sup> September, 2014, the court held that the Plaintiffs had not established a *prima facie* case with chances of success because the suit property was registered in favour of the Respondent. The court also stated that the Plaintiffs could not succeed in their claim of the suit property by virtue of the doctrine of adverse possession.

13. Having dismissed the Application for injunction, the Petitioner cannot move this court to seek for the same orders that he is seeking in Malindi ELC No. 78 of 2014.

14. The law that bars filing a multiplicity of suits is found in Section 6 of the Civil Procedure Act. According to that Section, no court should proceed with the trial of any suit or proceedings in which the matter in issue is directly and substantially in issue between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceedings is pending in the same court.

15. In view of the pending Malindi ELC No. 78 of 2014, I find that the filing of the current Petition by the same parties raising the same issues and seeking the same reliefs is an abuse of the court process. The Petitioner herein should fix ELC case No. 78 of 2011 for hearing and determination.

16. For those reasons, the Petition dated 22<sup>nd</sup> June, 2016 together with all the Applications therein are hereby struck out with costs.

**DATED AND SIGNED AT MACHAKOS THIS 2<sup>ND</sup> DAY OF MAY, 2017.**

**O. A. ANGOTE**

**JUDGE**

**DATED, DELIVERED AND SIGNED AT MALINDI THIS 12<sup>TH</sup> DAY OF MAY, 2017.**

**J. O. OLOLA**

**JUDGE**