



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO.195 OF 2015

JAPHETH KARUKU NOAHPLAINTIFF

VERSUS

WILLY MUZUNGU GAMIMBA.....1ST DEFENDANT

KILIFI DISTRICT LANDS REGISTRAR2ND DEFENDANT

HON. ATTORNEY GENERAL3RD DEFENDANT

RULING

1. What is before me is the Plaintiff's Application dated 23rd October, 2015 seeking for the following orders:

a. That the 1st Defendant, by himself, his representatives, his servants and/or agents or any person claiming to be under him be restrained by way of permanent injunction from dealing with the Plot No. 711 and 752 that the Defendant claims ownership in any manner contrary to the Plaintiff's interest pending final determination of the suit.

b. That cost of this Application be provided for.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that the Land Disputes Tribunal made an Award in respect of the suit land which was not in his favour; that they filed an Appeal in Appeal Case No. 81 of 1999; that the land has not been demarcated and he fears that his property will be registered in the Defendant's name and that he stands to suffer irreparably.

3. In his Grounds of Opposition, the 1st Defendant averred that the Plaintiff's Application does not meet the prerequisite requirements of Order 40 of the Civil Procedure Rules and that if the orders are granted, they will be prejudicial to him.

4. The Plaintiff's advocate submitted that the Plaintiff has established a *prima facie* case because he has shown that he has proprietary interest in the land; that the suit property is the Plaintiff's ancestral land and that the Plaintiff has been on the land since time immemorial.

5. The Plaintiff's counsel submitted that the suit property was illegally allocated to the Defendant by the Tribunal.

6. The 1st Defendant's counsel submitted that the 1st Defendant bought the suit land from the Plaintiff's

father in the year 1968; that the 1st Defendant has been cultivating the land since then and that both the Chief and the Land Disputes Tribunal ruled in favour of the 1st Defendant when the dispute was referred to them.

7. Counsel submitted that the issues raised in the instant suit and the Application have already been determined by the Land Disputes Tribunal and that an Appeal was filed with the Provincial Land Disputes Appeals Committee; that the appeal should have been transferred to this court for hearing and determination and that instead the Applicant filed a fresh suit.

8. The Plaintiff in this suit has admitted that the issues raised in his Plaint were dealt with by the Land Disputes Tribunal and that he filed an Appeal with the then Provincial Land Disputes Committee.

9. The Plaintiff's Application and Affidavit is not clear on his proprietorship interest in the suit property. Indeed, it is not clear to this court the issues that were before the Tribunal and the kind of Award that was made by the said Tribunal.

10. Considering that the Plaintiff has admitted that he filed an Appeal after the Land Disputes Tribunal made an Award in favour of the 1st Defendant, the Plaintiff should have transferred the said Appeal to this court for hearing and determination instead of filing a fresh suit.

11. In the case of *Munga Mbodi Mwendwa vs. Muguza Jangwata Jinda & Another (2014) eKLR*, this court held as follows:

“Upon the repeal of the Act, all the appeals which were pending before the Appeals Committee should be transferred to the Environment and Land Court and dealt with by the court in its appellate jurisdiction.”

12. In view of the above legal position, and in the absence of the proceedings and Award of the Tribunal, the court is unable to make a determination on the issues raised in the Application.

13. For those reasons, I dismiss the Application dated 23rd October, 2015 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