



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 73 OF 2016

JONATHAN BAYA MKETTA.....1ST PLAINTIFF

RAYMOND KARISA NGUMBAO.....2ND PLAINTIFF

ABIBA SHABAN (*suing as officials of*

NYONGORO FARMERS CBO).....3RD PLAINTIFF

VERSUS

WITU NYONGORO RANCH (DA) CO. LTD.....1ST DEFENDANT

BETTER GLOBE FOREST LTD2ND DEFENDANT

NATIONAL LAND COMMISSION3RD DEFENDANT

COUNTY GOVERNMENT OF LAMU4TH DEFENDANT

RULING

1. In the Application dated 24th March, 2016, the Plaintiffs are seeking for injunctive orders in the following terms;

a. That this Honourable Court be pleased to issue an order of injunction restraining the Defendants either by themselves, their agents, servants, attorneys or any other person acting under their instructions from evicting, dispossessing, and/or interfering with the Applicant's use and possession of parcel of land known as L.R. No. 29274 in any manner whatsoever pending hearing and determination of the main suit.

b. That cost of this Application be provided for.

2. The Application is supported by the Affidavit of the 1st Plaintiff who has described himself as the chairperson of Nyongoro Farmers CBO.

3. According to the 1st Plaintiff, the members of Nyongoro Farmers CBO are peasant farmers who have been living and cultivating parcel of land known as 29274 (*the suit property*) since 1964; that in the year 2013, its members were arrested for trespass and that after the members of Nyongoro Farmers CBO were arrested, they saw for the first time the title document in respect of the suit land.

4. That although the 3rd Defendant directed that the title to the suit property should be regularized by proper planning and survey, the 1st Plaintiff deponed that the 1st Defendant went ahead to lease the suit property to the 2nd Defendant.
5. It is the Plaintiffs' case that the 3rd and 4th Defendants have proceeded to regularize the 1st Defendants' title without involving the Plaintiffs; that the Respondents' actions amount to violation of their rights and that the balance of convenience weighs in their favour.
6. In the Grounds of Opposition, the 1st Defendant averred that there is no leave granted by the court for the plaintiffs to file a representative action; that the 1st Respondent is the registered proprietor of the suit land that the orders being sought cannot be granted.
7. In his Replying Affidavit, the 1st Defendants' chairman deponed that the 1st Defendant was incorporated in the year 1971; that the Applicants do not have authority from the purported members of Nyongoro Farmers to file the suit and that the Applicants are neither farmers nor do they occupy the suit property.
8. According to the 1st Defendant's chairman, the 2nd Defendant showed interest in leasing the suit land in the year 2006; that they entered into a Memorandum of Understanding with the 2nd Defendant on 29th February, 2008 and that at that time, there were no squatters on the land.
9. It is the case of the 1st Defendant that they did not get a chance to inform the National Land Commission their side of the story and that the Applicants do not have any proprietary interest in the suit land.
10. The 2nd Defendant's Managing Director on the other hand deponed that the Plaintiffs have not been in occupation of the suit land since 1964; that when the 2nd Defendant entered into a Memorandum of Understanding with the 1st Defendant on 29th February, 2008, the land was unoccupied and that on 29th September, 2011, the 2nd Defendant launched a tree planting exercise on the land which was officiated by the then Assistant Minister for Forestry & Wildlife, the then area Member of Parliament and the Director of Kenya Forest Service.
11. After planting tress covering an area of 296.02Ha, the 2nd Defendant's Director deponed that the squatters started invading the cleared areas; that the Plaintiffs' only waited for the cleared part before invading the same and that they have invested more than Kshs. 115,000,000 in the project.
12. The Plaintiff and the Defendant's advocates filed their respective submissions and authorities which I have considered.
13. It is not in dispute that the 1st Defendant is the registered proprietor of L.R No. 29274 measuring 32,000Ha.
14. According to the grant that has been annexed on the Plaintiffs' Affidavit, the suit property was registered in favour of the 1st Defendant on 25th September, 2012. The land was to be utilized for ranching purposes.
15. The evidence before the court shows that even before the land was registered in favour of the 1st Defendant, the District Forest Officer, Lamu, had informed the 1st Defendant vide his letter of 30th October, 2006, to lease the land to "*Green Planet Forestry Kenya Ltd*" for Afforestation purposes.
16. Later on, the 1st Defendant entered into a Memorandum of Understanding with the 2nd Defendant dated 29th February, 2008.

17. In the Memorandum of Understanding, the 1st Defendant sub-leased to the 2nd Defendant 21,300Ha of the suit land for the purpose of growing *Jatropha curcas* trees and other trees. The project was in line with the Government policy of increasing forest cover to the internationally recommended 10%.

18. The launch of the tree planting exercise on the suit land was presided over by the then area Member of Parliament and the then Assistant Minister for Forestry.

19. Although the Plaintiffs have alleged that its members have been in occupation of the suit land since 1964, they have not presented that evidence to court.

20. In any case, it is unlikely that the area Member of Parliament and the Cabinet Secretary in charge of Forestry would have launched the tree planting exercise on the suit land if indeed the Plaintiffs were already living on the suit land.

21. In view of the importance of the ongoing afforestation activities on the suit land by the 2nd Defendant, and in the absence of evidence to show that the Plaintiffs have always lived on the suit land, I decline to issue the injunctive orders sought.

22. The Plaintiffs, the residents of the area and the whole nation will benefit from the afforestation of the suit land, which should be encouraged and not stopped.

23. For those reasons, I dismiss with costs the Notice of Motion dated 24th March, 2016.

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