



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 61 OF 2016**

**KENYA ELECTRICITY GENERATING CO. LTD .....PLAINTIFF**

**VERSUS**

**ABDULRAHMAN M. AHMED.....DEFENDANT**

**RULING**

1. The Application before me is dated 15<sup>th</sup> March, 2016.
2. In the Application, the Plaintiff is seeking for the following orders:
  - a. That pending the hearing and determination of this suit filed herein, an order of injunction do issue, restraining the 1<sup>st</sup> Defendant/Respondent jointly and severally whether by themselves, their agents, employees or otherwise howsoever, from interfering with the Plaintiff/Applicant's quiet possession of all that property known as L.R. No. 12852/118.*
  - b. That the OCS Lamu police station do enforce the orders herein.*
  - c. That this Honourable Court be pleased to issue any other or further orders it deems meet and just.*
  - d. That the costs of this Application be borne by the Defendant.*
3. The Application is supported by the Affidavit of the Plaintiff's property Manager who has deponed that in June, 2001, the Plaintiff applied to be allocated land in Mokowe for the purpose of expansion of its power generating plant for the benefit of the general public.
4. It is the Plaintiff's case that the Ministry of Lands issued to the Plaintiff with the letter of allotment for land measuring 12.5 acres and that on 11<sup>th</sup> November, 2002, the Plaintiff paid to the Government the requisite allotment fees amounting to Kshs. 177,490.
5. According to the Plaintiff's Manager, the Plaintiff was issued with a Certificate of Title. However, in the year 2010, the Defendant trespassed on the suit land and disrupted the ongoing fencing of the land.
6. It is the Plaintiff's deposition that in the year 2016, the court found the Defendant guilty of causing malicious damage to property and that the orders being sought should be allowed.
7. In response, the Defendants deponed that the registration of the suit land in the name of the Plaintiff was fraudulent; that in 1996, the Government allocated him together with his father and four brothers the

suit land and that they were duly issued with letters of allotment.

8. It is the Defendant's case that subsequently, the government issued to him, his four brothers and father the title documents for L.R. No. 12852/113, 12852/114 and 12852/115.

9. The Defendant deponed that in its letter dated 10<sup>th</sup> October, 2013, the National Land Commission confirmed that the Plaintiff's alleged Plot No. 12852/118 and 163 had encroached on Plot No. 12852/381 and 382 which prompted the Director of Survey to advise that the said title should be cancelled.

10. According to the Defendant, a licenced Land Surveyor in his report dated 25<sup>th</sup> September, 2015 established that there was an earlier Survey Plan No. F/R No. 307/70 that surveyed Plot Nos. L.R. 12852/103 to 116 and that the Plaintiff's Plot No. L.R. 12852/118 "swallowed" all the plots in that earlier survey.

11. In her Further Affidavit, the Plaintiff's Manager deponed that the Defendants did not pay for their letters of allotment within the requisite 30 days; that the letter by the National Land Commission does not relate to the suit land and that the Plaintiffs' title was issued well over a year before the Defendant's purported title was issued to him.

12. The advocates for the parties filed submissions and authorities which I have considered.

13. The Plaintiff is seeking for orders restraining the Defendant from interfering with property known as 12852/118 (*the suit property*).

14. In support of its case, the Plaintiff has exhibited a letter of allotment for an unsurveyed land in Mokowe. The land was to be used for Electricity generation.

15. Annexed on the Plaintiff's letter of allotment is an approved Part Development Plan Number 13. The said Part Development Plan was approved in July, 2002 by both the Director of Physical Planning and the Minister for Lands and Settlement.

16. The Plaintiff has also exhibited the grant that was subsequently issued for L.R. No. 12852/118 measuring 5.083Ha. The said grant was registered on 12<sup>th</sup> July, 2006.

17. On the other hand, the Defendant annexed on his Affidavit letters of allotment dated 1<sup>st</sup> July, 1998 in respect to four parcels of land in Mokowe area which were marked as plots "D", "E", "G" and "F".

18. It would appear from the Indent annexed on the Defendant's Affidavit that the said plots were surveyed under plan number FR 307/70. The grants for those plots were registered on 29<sup>th</sup> October, 2007 as L.R. Nos. 12852/112, 12852/113, 12852/114 and 12852/115. The Deed Plans for the said four plots were all registered by the Director of Surveys on 10<sup>th</sup> May, 2007.

19. The copies of the receipts for the payments of the requisite allotment annexed on the Defendant's Affidavit shows that the Defendant made the payments on 3<sup>rd</sup> May, 2007, the same year that the Deed Plans for the four parcels of land were registered.

20. According to the Report of the Surveyor dated 25<sup>th</sup> September, 2015, the Plaintiff's plot i.e. L.R. No. 12852/118 completely engulfs all the plots that were surveyed vide Plan No. 307/70 i.e. L.R. Nos. 12852/103-116.

21. The Surveyors' Report does not however state which of the two surveys came first.

22. Although the Defendant has relied on a letter dated 10<sup>th</sup> October, 2013 by the National Land Commission, the said letter is in respect to L.R. Nos. 12852/381 and 12852/382 and not the plots that were allocated to the Defendant.

23. The evidence before this court shows that by the time the Defendant was issued with a Certificate of title for his plot in the year 2007, the Plaintiff herein had already been issued with a Certificate of Title for its land.

24. I have perused the Part Development Plans Plan annexed on the Defendant's letters of allotment and the Part Development annexed on the Plaintiff's letter of allotment.

25. Unlike the Plaintiff's Part Development Plan, the Defendant's Part Development Plan does not have an approved development number.

26. In view of the fact that the Plaintiff's grant was issued before the four grants were issued to the Defendant and his relatives, I find and hold that the Plaintiff has established a *prima facie* case with chances of success.

27. In any event, the purpose for which the Plaintiff was allocated the suit land is for public, and in the absence of evidence to show that the Plaintiff's title was issued fraudulently, I find and hold that the Defendant can be compensated in terms of damages in the event that he succeeds in his claim.

28. The public interest in the circumstances of this case overweighs the private interests of the Defendant.

29. For those reasons, I allow the Application dated 15<sup>th</sup> March, 2016 as prayed.

**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**