



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 65 OF 2016

JELANI NURENI ABASHOBUAPPLICANT

VERSUS

JAMES MWANGI.....1ST RESPONDENT

JAMES NGALA2ND RESPONDENT

RULING

1. In the Notice of Motion dated 21st March, 2016, the Plaintiff is seeking for the following orders:

a. That pending the hearing and determination of this Application herein a temporary injunction order do issue restraining the Defendants/Respondents by themselves, their agents, servants and any other person having interest from trespassing, digging sand, marking out boundaries or interfering in any way with plot numbers 376 and 378 Jimba Settlement Scheme.

b. That this Application be heard inter-parties on such a time this Honourable Court may direct.

c. That costs of this Application be provided for.

2. The Application is premised on the grounds that the Applicant is the rightful owner of plot numbers 376 and 378; that the Respondents have trespassed on the two plots and that the Respondents have failed to recognize the boundaries of the said plots.

3. In his Affidavit, the Plaintiff deponed that he purchased the suit properties for Kshs. 2,000,000 from the late Kahindi Karisa Ngala; that the Defendants invaded the suit land between 10th and 15th February, 2016 and that the Respondents have started fencing the said plots.

4. In response, the 1st Defendant deponed that he has been managing and taking care of parcel of land known as Kilifi/Jimba/426 since the year 2009 having been authorized to do so by the owner, one Tabu Karisa Moki (*deceased*); that the owner of Plot Nos. 376 and 378 is Ivory Sands Limited and that they have never had any misunderstanding with the owner of Plot Nos. 376 and 378.

5. According to the Defendants, Plots Nos. 376 and 378 are enclosed with a perimeter wall and their boundaries are distinct; that Plot No. 378 does not share a wall with Plot No. 426 and that in any event, the Applicant does not have the *locus standi* to file the current suit.

6. It is the Defendants' case that the said Kahindi Karisa Ngala has never owned Plot No. 376 and 378; that the annexed allotment letter is a forgery and that they have never invaded the said two plots.

7. Both the Plaintiff's and Defendants' advocates filed their respective submissions which I have considered.

8. The Plaintiff's case is that he purchased parcels of land known as plot numbers 376 and 378 from one Kahindi Karisa Ngala. The said Kahindi Karisa Ngala died on 21st March, 2015.

9. Although the Plaintiff claims that the Defendants have encroached on the said parcels of land, the Defendants have denied that claim.

10. According to the 1st Defendant, he is only taking care of the neighbouring plot, which is Plot No. 426.

11. The Defendants have stated in their pleadings that indeed, plot numbers 376 and 378 have a perimeter wall and that the same are not owned by the Plaintiff.

12. Although the Plaintiff annexed a Sale Agreement showing that he purchased the suit property from one Kahindi on 11th January, 2010, the Plaintiff did not inform the court if he completed the transaction by paying the full purchase price and transferring the property to his name.

13. Indeed, there is no evidence before this court to show that the two suit properties were owned by the said Kahindi Karisa in the first place.

14. In any event, the Plaintiff did not respond to the Respondents' deposition that the two properties have a perimeter wall and that they are owned by Ivory Sands Limited.

15. In view of the above observations, I find that the Plaintiff has neither established a *prima facie* case with chances of success nor shown the irreparable injury that he shall suffer if the injunctive order is not granted.

16. For those reasons, I dismiss the Application dated 21st March, 2016 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