



REPUBLIC OF KENYA
IN THE ENVIROMENT AND LANDS COURT
AT MALINDI
MISC CIVIL APPLICATION NO. 3 OF 2017

1. MASHA NGAO
2. ROBERT GAMBO BUNJU
3. KATANA NGOTI JAMBO
4. CHRISPUS WANJE
5. OMAR TSOFWA MWENI
6. MAMA FATUMA
7. BABU WANJEAPPLICANTS

VERSUS

OKOMBOLI ONG'ONG'A.....DEFENDANT

RULING

1. Before me is an application dated 19th January 2017 seeking for Orders: -

1. SPENT
2. SPENT
3. SPENT

4. THAT this Honourable Court be pleased to order a temporary Injunction restraining the Respondent herein, the Officer Commanding Station Kilifi Police Station, their agents, servants employees etc(sic) from harassing and interfering in any way with stay and occupation of (the) applicants on Plot No. 20252/13 Title No. CR 30853 situated in Kilifi Town pending the hearing and determination of Environment & Land Case No. 73 of 2015 Malindi.

5. THAT the Order granted herein do apply to Environment and Land Court Case No. 73 of 2015; Okomboli Ong'onga -vs- Masha Ngao & Others.

6. THAT the costs of this application be provided for.

2. The Application is supported by an Affidavit sworn by the 1st Applicant Masha Ngao on 19th January 2017. The gist of the application is contained in the grounds stated on the body thereof which can be summarized as follows: -

(i) That on 13/1/2017, the Respondent in the company of the OCS Kilifi together with Police Officers and hired goons invaded the suit property and began demolishing houses and other properties belonging to the Applicant.

(ii) That on 18/1/2017 the 1st Applicant was arrested by the OCS Kilifi who expressly informed him that if they did not vacate the property, he would proceed to evict them and demolish their houses.

(iii) That the Applicants have challenged the Respondent's title in Malindi ELC No. 73 of 2015 and an eviction would lead to a miscarriage of justice as there is no Judgement or decree in favour of the Respondent.

(iv) That no demolition or eviction orders were granted in the said Malindi ELC 73 of 2015.

(v) That there is pending before the Court of Appeal in Malindi Civil Appeal No. 35 of 2016 which appeal is challenging the temporary injunction orders the Respondent obtained in Malindi ELC No. 73 of 2015 on 19th February 2016.

3. The Application is opposed. In 12 Grounds of Opposition filed on 31st January 2017, the Respondent Okomboli Ong'onga contends that the Application is baseless, vexations and a total abuse of the Court Process. The Respondent states that the Applicants are illegally seeking to stay the orders granted in favour of the Respondent on 19th February 2016 in Malindi ELC No. 73 of 2015 which orders restrained the Applicants from trespassing and/or interfering with the Respondents quiet use, possession, occupation, development and proprietorship of the suitland known as Plot No. 20252/13 Title CR 30853 situated in Kilifi Town.

4. I have considered the application before me and the Grounds of Opposition filed by the Respondent. I have also considered the rival submissions and authorities placed before me by the Learned Advocate representing the parties herein.

5. From the material placed before me, it is apparent that in the year 2015, the Respondent herein instituted Malindi ELC 73 of 2015 against the Applicants citing trespass and illegal encroachment onto the suitland. Together with the suit, the Respondent also filed an application dated 11th May 2015 seeking for an injunction to restrain the Applicants from dealing with the suit property.

6. On 19th February 2016, the Honourable Angote J. having heard the application granted orders as follows: -

1. That a temporary order of injunction be and is hereby issued restraining the Defendants/Respondents by themselves, servants, agents and/or employees from trespassing and/or interfering in any way with the Plaintiff's quiet possession, use, occupation, development and proprietorship of the suit property that being all that piece of land known as Plot No. 20252/13 Title CR 30853 situated in Kilifi Town pending the determination of the suit.

2. That the OCPD Kilifi Police Station(sic) to ensure compliance with the orders issued by this Honourable Court.

7. Dissatisfied by the said Orders, the Applicants herein lodged Civil Appeal No. 35 of 2016 at the Court of Appeal in Malindi. The said Appeal is yet to be heard.

8. It is apparent that in an attempt to enforce the Court's orders aforesaid, the Respondent together with

the OCS Kilifi attempted to remove the Applicants from the suitland on 13th January 2017. The Applicants on the realization that there was no Environment and Land Court sitting in Malindi at the said time moved to the High Court in Mombasa and filed this present Miscellaneous Application. On 3rd February 2017, the Honourable Justice Anne Omollo transferred the matter back to Malindi for hearing and disposal.

9. From the foregoing circumstances, it is clear to me that this court made orders on 19th February 2016 restraining the Applicants herein from interfering with the Respondents use, occupation, possession and proprietorship of the suit property. The said orders were to be enforced by the OCPD Kilifi. The said Orders have neither been set aside nor stayed. Instead the Applicants are now seeking their own counter-injunction to restrain the Respondent from interfering with their stay and occupation of the self-same suitland. In my view that is inviting the court set to a dangerous precedent. This court will not take that course.

10. It is apparent that the Applicants have refused and/or neglected to comply with the Court Orders issued on 19th February 2016. They are in this court seeking an equitable remedy. As the maxim goes *he who comes to equity must come with clean hands*. The Applicants hands are heavily tainted and equity thus refuses to come to their aid.

11. Accordingly, I hereby discharge the temporary orders granted ex-parte by the Honourable Omollo J in Mombasa on 19th January 2017 and dismiss the application dated the same day with costs to the Respondent.

Dated, signed and delivered at Malindi this 13th day of July, 2017.

J.O. OLOLA

JUDGE