



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
LAND CASE NO. 38 OF 2017

1. STEPHEN KAHINDI KONDE..... PLAINTIFF

VERSUS

1. MARY WESA..... 1ST DEFENDANT

2. MAIMUNA KHALIDI..... 2ND DEFENDANT

RULING

1. Before me is a Notice of Motion application dated 22nd February 2017. The Plaintiff Stephen Kahindi Konde is seeking for:-

(i) An order of injunction restraining the Defendants by themselves, agents, servants, legal representatives or any other person claiming interest through them from trespassing into, entering, remaining, selling, alienating, surveying, sub-dividing, building, wasting and/or dealing with the suit property in Shingila B measuring 100 feet by 100 feet in any manner whatsoever pending the hearing and determination of the suit.

(ii) In addition, the Plaintiff prays that the costs of this application be provided for.

2. The Application is supported by an annexed affidavit of Stephen Kahindi Konde sworn on 22nd February 2017 and is premised on the grounds that:-

(i) The Plaintiff is the bona fide and/or beneficial owner of the suit property;

(ii) The Plaintiff has been in possession and occupation of the property until recently when the 2nd Defendant forcefully entered and started putting up structures thereon;

(iii) The Plaintiff/Applicant who had purchased the suit property from the 1st Defendant has already prepared his building plans and is ready to develop the suit property;

(iv) The 2nd Defendant has turned violent against the Plaintiff and has employed a number of youth who are working day and night on the suit property in a bid to defeat the Plaintiff's rights thereon; and

(v) Unless the Defendants are restrained by an Order of this Court, the Plaintiff rights over the

property shall be greatly prejudiced.

3. In a Replying Affidavit sworn on 25th April 2017, the 1st Defendant, Mary Wesa fully supports the Plaintiff's case and application for injunction. She swears that she was once a Member of a Group known as Shingila B Self Help Group which came together with the aim of purchasing some land. It is her case that the parcel of land in question comprises a Portion of land acquired by the said Shingila B Self Help Group and which portion belonged to herself.

4. The 1st Defendant further avers that on 9th February 2012, she sold her plot to the Plaintiff as per a Sale Agreement which she has annexed to her Affidavit. She accuses the 2nd Defendant of having trespassed into the same plot she sold to the Plaintiff and avers that the person from whom the 2nd Defendant purports to have bought the land could not have sold it to the 2nd Defendant as the said seller was not a member of their Group.

5. On her part the 2nd Defendant, Maimuna Khalid refutes all the averments made by the Plaintiff. In an Replying Affidavit sworn on 21st April 2017 she avers that she lawfully occupies and owns a parcel of land measuring 50 feet by 50 feet situate at Shingila B area in Kilifi township which land he states he lawfully purchased from the then owner thereof one Yabu Kazungu Kala.

6. The 2nd Defendant avers that she took physical possession of the said parcel of land immediately after she purchased it and in November 2016, she began constructing a house thereon. It is her case that no one interfered with her possession until February 2017 when the Plaintiff served her with suit papers in relation to this case. She contends that by then the house was nearing completion and she has since moved to stay therein with her family. She accordingly urges this Court to dismiss the Plaintiff's case.

7. I have considered the application and the responses thereto by the two defendants. I have also considered the written submissions filed herein by the Learned Advocates for the parties.

8. The Plaintiff moved to this Court seeking an order of injunction to restrain the defendants from constructing structures on the property which he claims. He describes the apparently unsurveyed parcel of land to be measuring 100 feet by 100 feet. His case is supported by the 1st Defendant who states that she was a member of a Self-Help Group known as Shingila B Self Help Group which Group previously owned the land before the 1st Defendant sold her portion to the Plaintiff. Both the Plaintiff and the 1st Defendant have annexed a Sale Agreement showing that the land in question was sold to the Plaintiff at Kshs 235,000/=

9. Arising from the description of the land by the two parties, it is possible that the parties may be referring to two different parcels of land. While the Plaintiffs and the 1st Defendant insist that the person said to have sold the land to the 2nd Defendant could not have done so by virtue of the fact that he is not a member of the said Shingila Self Help Group, nothing was placed before me to show the legal status of the said Shingila B Self-Help Group vs-a-vis the land in question and/or the Shingila B area in general. It would appear to me that the said Group however well-intentioned it may be remains nothing but an amorphous body of individuals seeking to assist each other to acquire land. It is not a legal entity and certainly does not appear, from the material placed before me, to have any legal entitlement to the land in question.

10. As it were, it is not disputed that the 2nd Defendant has carried out some developments on, and resides upon the 50 by 50 feet land she claims to be hers. If I were to issue the Order of injunction sought and it turned out that both the Plaintiff and the 2nd Defendant are referring to the same Parcel of land, such orders would amount to an eviction of the 2nd Defendant from a parcel of land whose ownership is yet to be fully determined.

11. Accordingly I find no merit in the Plaintiff's application. The Order that endears itself to me in the circumstances and which I hereby do grant is that the status quo obtaining as of today be maintained

pending the hearing and determination of the main suit.

12. The costs of this application shall abide the outcome of the suit.

Dated, signed and delivered at Malindi this 15th day of November, 2017.

J.O. OLOLA

JUDGE