



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 11 OF 2011

RENE SCHILLER.....PLAINTIFF/APPLICANT

VERSUS

1. CHARLES WABUKO

2. THE COMMISSIONER OF LANDS

3. THE HON ATTORNEY GENERAL.....DEFENDANTS

RULING

1. I have before me for determination an application dated 8th March 2017. The Applicant Rene Schiller is praying for orders:-

1. THAT the Officer Commanding Station (OCS) Kilifi Police Station do provide the necessary security during the construction until completion thereof of the perimeter wall around the Plaintiff's parcel of land known as Kilifi Township Block IV/177

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

2. The Application is supported by the Plaintiff/Applicant's Affidavit sworn on 8th March 2017 and is premised on the grounds:-

(i) That on 20th December 2013, this Court delivered Judgment wherein it declared the Plaintiff/Applicant the bona fide registered owner of the leasehold interest in the property known as Kilifi Township Block IV/177;

(ii) That subsequently on 5th May 2016 the Court allowed the Plaintiff to construct a perimeter wall around the suit property. The Plaintiff then applied and obtained building plans approvals from the Kilifi County Government and subsequently commenced construction of the wall.

(iii) That on 5th March 2017 whilst its workers were carrying of the said construction a group of youths invaded the premises and went ahead to demolish the wall under construction.

(iv) That upon making a report to the OCS Kilifi Police Station, the OCS intimated that police would only provide security during the construction of the wall, if a specific order was issued by the Court.

(v) That it is fair and just to grant the Orders sought to avoid violence and wanton destruction of property and to allow the Plaintiff to exercise his Constitutional rights to deal with his property in the manner he deems appropriate.

3. In Grounds of Opposition dated 3rd April 2017 and filed herein on 4th April 2017, the 2nd and 3rd Respondents are opposed to the grant of the Orders sought on the grounds inter alia:

(i) That the Court is functus Officio and the application and/or any other subsequent suit do not warrant intervention of this Court.

(ii) That the suit herein is Res Judicata and the issues arising at this stage can only be dealt with by instituting a fresh suit.

(iii) That by dint of Section 24 of the National Police Service Act, 2011, the role of the Police is confined to the maintenance of law and order.

(iv) That the arrangement being sought in this Application amounts to utilizing the Police to advance private interests while is an abuse of their power and contrary to their mandate.

(v) That the Police should not get entangled in private issues but instead direct their energies and resources to the role of maintenance of law and order.

(vi) That the Orders sought cannot issue since the Police is not a party to the Application; and

(vii) That the Application is otherwise an abuse of the Court Process.

4. I have considered the application and the Grounds of Opposition filed by the 2nd and 3rd Respondent. I have equally considered the submissions placed before me by the Learned Counsels for the Parties.

5. It is not contested that the suit herein was filed on 2nd March 2011 against the 3 Defendants. On or about 20th December 2013, Judgment was delivered in favour of the Plaintiff and subsequently on 8th May 2014, a decree was issued by this Court to the effect:-

1. That a declaration be and is hereby issued that the Plaintiff herein is the bona fide registered proprietor of the leasehold interest in the property known as Kilifi Township Block IV/177.

2. That each party shall bear their own costs.

6. It is worthy of note that the National Police Service was not a Party to the proceedings upto the time of the issuance of the decree. It is the Applicant's case that on 5th March 2017 while his workers were constructing a wall around his property which formed the subject matter of this suit, a group of youth invaded the land and destroyed the wall. Having reported the matter to the OCS Kilifi Police Station, the OCS "intimated" that he could only take action if a Specific Order was issued by this Court. It is on that background that the Applicant is now seeking an Order to direct the OCS Kilifi Police Station to provide the necessary security during the construction of a Perimeter Wall around the premises until its completion.

7. The Honourable the Attorney General however points out that this Court is now functus officio and the orders sought are unwarranted.

8. The National Police Service is required under Section 24 of the National Police Service Act, Act No. 11 of 2011 to generally maintain law and order and to preserve peace and protect property. Under Section 8 of the Act, the Service is placed under the overall and independent Command of the Inspector General who is charged with the duty to provide the Command structure and system of the service for the efficient administration of the Service nationally.

9. To enable the Service to operate at its optimum level, I think it is only fair that the Service be allowed to undertake its functions and powers without unnecessary directions from those not involved in its daily operations and in the manner required by law. As was stated in *Lydia Muthoni Nabea –vs- Benson Kiriinya & 2 Others (2008) eKLR:-*

“Courts will be reluctant to involve the Police in effecting Court Orders in purely civil proceedings. In very rare and exceptional cases will the Court direct the Police to be involved in the execution of its order issued in the exercise of its civil jurisdiction. But even then the Applicant must demonstrate that there is a real threat to peace and tranquility in which case the role of the Police will only be confined to maintenance of law and Order.”

10. As it were, the Applicant has not demonstrated any nexus between the happenings of 5th March 2017 and the application made herein. The Orders decreed by this Court have not been resisted by the Respondents and the Applicant has not stated either in his supporting affidavit or in the annexed statement to the Police that the youth who invaded the land were resisting the enforcement of the decree of this Court.

11. In my view, even if that were the case, the Applicant ought to have demonstrated that he made a report to the Police and that they failed and/or neglected to take action hence necessitating some orders of compliance by this Court. Otherwise it is apparent herein that what the Applicant is seeking is to have Police Officers stationed at his premises for his private use. In that event, what the Applicant needs to do is to apply to the Inspector General under the Provisions of Sections 104 and 105 of the, National Police Service Act for Police Officers to be placed in his premises as he carries out the construction.

12. Accordingly, I find no merit in the Application. The same is dismissed.

13. As there is no pending proceeding between the parties in the suit, this file shall remain concluded and closed.

14. *Each Party shall bear their own costs.*

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

J.O. OLOLA

JUDGE