

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC CASE NO. 101 OF 2017

ANASTANCIA KAVISA JOSEPH NDUNGE.....PLAINTIFF/APPLICANT

-VERSUS-

ABDALLA SALIM SAID

NASSIR MUSA MOHAMED.....DEFENDANTS/RESPONDENTS

RULING

1. The application for determination is dated 22nd March 2017 brought under the provisions of Order 40 rule 1 & 2 of the Civil Procedure Rules and Section 3A of the Civil procedure Act. The plaintiff prays for orders that:

a) Spent

b) Spent

c) That a temporary injunction do issue restraining the Defendants, Abdalla Salim Said and Nassir Musa Mohamed by themselves or their agents or servants from entering and/or constructing and/or in any other manner whatsoever interfering with the parcel No. Block "B" on plot No. 220/I/M.N known as house No. 056 situate at Mtopanga, Mombasa pending the hearing and determination of this suit.

d) That the Defendants do pay the costs of this application.

2. The application is supported by the grounds on the face of it and the affidavit sworn in support thereof. In brief, the applicant states that she bought a portion of land measuring 70 feet x 40 feet comprised in title No 220/I/MN which title is in the name of Seyyid Abdalla & Sayyid Sheh Ali. The applicant avers that the 1st defendant is attempting to sell this portion to the 2nd defendant and/or that they have encroached on the plot which unless they are stopped by an order of injunction, they will dispossess her of the plot. The applicant annexed a sale agreements and receipts together with approved building plans for the suit portion to demonstrate her claim over it.

3. The application is opposed by the 2nd defendant's replying affidavit dated 24th April 2017. The 2nd defendant deposes that plot No 220/MN/I comprises several sub – plots having different proprietors identified only by boundary beacons. That it is the applicant who is trying to grab the 2nd defendant's plot. The 2nd defendant also accuses the applicant of coming to Court with unclean hands because there are other existing cases. He also deposed that the applicant has not met the criteria for granting orders of injunctions.

4. The parties have filed written submissions which I have read and considered. From the evidence on record, the applicant has demonstrated that she purchased a portion of the land No 220/I/MN. The 2nd defendant also bought a portion of this land which portion neighbours the plaintiff's portion. The 2nd defendant said the dispute appears to be a **boundary dispute** which according to him is a preserve of the

Land Disputes Tribunal. The fact that the 2nd defendant acknowledges there is a boundary dispute is proof that the applicant has established a prima facie case with probability of succeeding. The Land Disputes Tribunal no longer exists and this Court has unlimited jurisdiction to hear and resolve disputes relating to environment and land in accordance with the provisions of Article 162 (2) of the Constitution and Section 13 of the Environment & Land Court Act 2011.

5. Given that the 2nd defendant acknowledges that the boundaries of the sub plots are identifiable by beacons and further to preserve the suit property so that this suit is not rendered to be an academic exercise, I am satisfied that the circumstances warrants that the orders sought granted so that none of the parties is inconvenienced/prejudiced. For the foregoing reasons, I do allow the orders as prayed in number (c) of the motion. The costs of this application to abide the outcome of the main suit.

Dated, signed & delivered at Mombasa this 6th December 2017.

A. OMOLLO

JUDGE