



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.118 OF 2015

(formerly Mombasa ELC No. 79 OF 2015)

MOHAMED MWARIZO MTINGO

(suing as the legal representative of the Estate of

MWARIZO MTINGO MLEKA.....PLAINTIFF/APPLICANT

=VERSUS=

- 1. ALI GAYA BEGAYA**
- 2. LEONARD KAIWE BANDIKA**
- 3. DAVID MBAYA BANDIKA**
- 4. KUIZI BANDIKA GAYA**
- 5. KUMBI KAIWE MBINI**
- 6. SAID GAYA KAIWE**
- 7. VICTOR MUTA DENJE**
- 8. LEONARD WASHE DENJE**
- 9. PETER CHAKWE DENJE**
- 10. ANDERSON MWADENA**
- 11. ANTONY KENGA MUPE**

12. COUNTY REGISTRAR OF LANDS KILIFI.....DEFENDANTS/RESPONDENTS

R U L I N G

1. The Application before me is the one dated 27th April 2015 filed by the Plaintiff and seeking for the following orders:-

(a) That pending the interpartes hearing of the Application a temporary order of injunction is issued restraining the Defendants herein by themselves, their agents, their employees and any other person on their behalf whomsoever and howsoever from alienating, selling, entering into, trespassing unto, constructing on, dealing in any way whatsoever and howsoever with plots number Buni/Kisimani/965.

(b) That pending the interpartes hearing and determination of this suit order of injunction is issued restraining the Defendants herein by themselves, their agents, their employees and any other person on their behalf whomsoever and howsoever from alienating, selling, entering into, trespassing unto, constructing on, dealing in any way whatsoever and howsoever with plots number Buni/Kisimani/965.

The Plaintiff's/Applicant's case:

2. According to the Plaintiff's Affidavit, his late father owned various properties including an unregistered parcel of land where he constructed his homestead; that before his father passed on, he had allowed various persons to construct dwelling houses on the said unregistered land and that during the adjudication process, one Gideon Dzosi Mwabenga who had constructed a dwelling house on the land laid a claim on the whole parcel of land necessitating the commencement of proceedings in the adjudication Tribunal.

3. It is the Plaintiff's case that their late father nominated one Bandika Kaiwe Gaya, a relative of the 1st to the 6th Defendants to represent him in the Tribunal and that the Tribunal decided the case in favour of his father.

4. The Plaintiff has averred that he later on realised that the 1st to the 6th Defendants had gone ahead and had the adjudication records altered and had the parcel of land registered in their names; that the said registration was contrary to law and that the 1st to the 6th Defendants have now started selling the suit property.

The Defendants'/Respondents' case:

5. In his Replying Affidavit, the 6th Defendant deponed that the suit premises, being Buni/Kisimani/95, was allocated to their brother, the late Bandika Kaiwe Gaya; that upon his demise and succession proceedings, they inherited the land and that it is not true that there were Tribunal proceedings between Gideon Dzosi Mwambega and the Plaintiff's father as alleged.

6. According to the 6th Defendant, the suit property was allocated to their brother, the late Bandika Kaiwe Gaya and that after confirmation of grant, a transfer was registered in favour of the 1st to the 6th Defendants.

7. It is the Defendants' deposition that they live on the suit property and that in any event, the Plaintiff does not have the locus standi to commence these proceedings.

8. I have considered the submissions filed by the Plaintiff's advocate in which he reiterated the depositions of the Plaintiff.

Analysis and findings:

9. The Plaintiff's Application and suit is grounded on the fact that his late father, Mwavizo Mtinji Mleka was the proprietor of the suit property and that the 1st to the 6th Defendants' brother, the late Bandika Kaiwe Gaya, only represented their father in the proceedings before the Land Adjudication Officer.

10. The proceedings in respect to the said suit have been annexed by both parties.

11. The record before this court shows that it is the 1st to the 6th Defendants' brother, the late Bandika who commenced proceedings before Land Adjudication Officers vide case number 21/94-95 between himself and one Gideon Dzosi Mwambaga. Indeed, the receipt annexed on the Defendants' Replying Affidavit shows that it is Bandika who paid Kshs.500 on 25th October 1994 to commence the said proceedings.

12. I have perused the proceedings of 7th September 1999 which shows that the Plaintiff's late father neither appeared as a party nor a witness in the proceedings before the Land Adjudication Officers.

13. The evidence of the 1st to the 6th Defendants' brother before the Land Adjudication Officer was that he was the owner of the land in dispute and not Gideon Dzosi.

14. The 1st to the 6th Defendants' brother informed the Land Adjudication Officers the neighbours who were abutting the suit property together with the kind of cultivation he was undertaking on the land.

15. In his findings of 7th September 1999, the Land Adjudication Officer found that the land belonged to Mr. Bandika and not Mr. Gideon Dzosi Mwambaga who had the land demarcated in his name.

16. After the decision of 7th September 1999, the District Lands Adjudication and Settlement Officer, Kilifi, confirmed vide his letter dated 17th July 2006 that the suit property was registered in the name of Bandika Kaiwe Gaya and on that basis his siblings were registered as the proprietors of the same upon his death.

17. The Certificate of Death annexed on the Plaintiff's affidavit shows that their father died in the year 2002.

18. There is no evidence that the Plaintiff's father objected to the registration of the suit property in the name of the late Bandika before his death.

19. Indeed, there is no evidence of any step that was taken by the Plaintiff's father after the decision of the the Land Adjudication Officers of 7th September 1999 and the subsequent changes in the register.

20. The 1st to the 6th Defendants have annexed photographs showing the houses, some of which are permanent in nature, constructed on the suit property.

21. In view of the decision of the Land Adjudication Officer of 7th September 1999 which has never been challenged, I am not satisfied that the Plaintiff has a prima facie case with chances of success.

22. It would appear, on the basis of the documents before me, that the 1st to the 6th Defendants were issued with a title after the procedure enumerated in the Land Adjudicated Act had been exhausted by the 1st to the 6th Defendants without any objection.

23. For those reasons, I dismiss the Plaintiff's Application dated 27th April, 2015 with costs.

Dated and delivered in Malindi this 26th day of **February**, 2016.

O. A. Angote

Judge