



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL PETITION NO. 19 OF 2013

IN THE MATTER OF: ARTICLES 10, 22 AND 23 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10, 19, 20, 21, 22, 23, 35, 40 AND 47 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013

AND

IN THE MATTER OF: AN UNLAWFUL DEMAND AND PURPORTED INCREMENT OF RATES CHARGED UNDER THE RATING ACT (CAP 267) AND THE VALUATION OF RATING ACT (CAP 266) BY THE KILIFI COUNTY COUNCIL

BETWEEN

MAMDUH MOHAMED TAIB.....PETITIONER

AND

KILIFI COUNTY COUNCILRESPONDENT

J U D G M E N T

1. This suit was commenced by way of a Petition dated 16th December, 2013 and filed on 17th December 2013.
2. In the Petition, the Petitioner has averred that he is the owner of Plot number MN/III/7710/9 and MN/111/7703/2 situated at Kikambala Division within Kilifi County.
3. It is the Petitioner's case that plot number 7710 and 7703 were created from the consolidation and subdivision of plot numbers 4403 and 4409; that the said plots had been vested in the Petitioner by right of inheritance from his late father and that plots number 4403 and 4409 were a sub-division of plot number 4402 which was previously plot number 847.
4. The Petitioner has averred that under Section 22(1) of the Rating Act, Plot number 4402 has been exempt from remission of rates by virtue of it being agricultural land; that the Petitioner was

- unlawfully ordered by the Respondent to pay all outstanding rate arrears on plot number 4402 before he could subdivide the same and that after payment of the rate arrears, the Respondent issued demand notices to the Petitioner demanding a total of Kshs.1,319,800 on plot number 7710/9 as accrued land rate arrears plus accumulated penalties and a total of Kshs.15,542,400 on plot number 7702/2.
5. According to the Petitioner, the demand letter sought for rent arrears of plot 7703 and 7710 and back dated to the year 2003, which arrears had been settled before plot number 4402 was subdivided.
 6. It is the Petitioner's case that the Respondent, in total disregard of the procedure provided for under the Valuation for Rating Act, has failed to cause a valuation of every rateable property within Kilifi; to lay the valuation roll before a meeting of the Kilifi County Executive Committee; to provide the Minutes of the County Executive Committee with regard to the valuation roll and publish a notice in respect to the current draft valuation roll.
 7. The Petitioner has stated in the Petition that he is unaware of the assessment methodology that was used to levy and increase the rates payable for plot numbers 7710 and 7703 and that the actions of the Respondent are arbitrary and meant to deprive the Petitioner of his interest in plot 7703 and 7710 which actions are a violation of the Petitioner's constitutional rights under Article 40 (2) (a) and (b), Article 47, Article 40(2)(b) and Article 35 of the Constitution.
 8. The Petitioner has prayed for a declaration that the outstanding rates arrears demand together with accumulated penalty to the tune of Kshs.16,862,200 made by the Respondent is illegal; an order directed to the Respondent restraining it from interfering with the Petitioner's enjoyment of his land and the costs of the Petition.
 9. In response, the Respondent's County Secretary deponed that the Petitioner lacks the *locus standi* to bring this Petition because the demand notice for the rates that are due was issued to one Mohsen Mohamed Taib and Johra Ali Mohamed and not him and that the Petitioner is not the registered owner of the suit properties and is therefore not a rate payer as alleged.
 10. The Respondent's County Secretary deponed that although the Respondent approved the consolidation and subdivision of plot numbers 4403 and 4409, the Applicant has not been issued with a consolidation and sub-division certificate.
 11. It is the Respondent's case that plot number 4402 is not an agricultural land; that the rates he paid for plot number 4402 were only for the year 2010 and 2011 and that having voluntarily paid the rates for plot number 4402 for the year 2010 and 2011, the Petitioner is estopped from refusing to pay the rates for plots number 7710 and 7703 which are a result of the subdivision of plot 4402.
 12. It is the Respondent's case that there is a county valuer who gives provisional valuation for any new sub-division and the said sub-divisions are captured and ratified in a supplementary valuation roll after which a rate payer is asked to pay the balance if the provisional value is found to have been less than the actual value.
 13. The County Secretary deponed that the last valuation roll for the County was done in the year 2003 and the last supplementary valuation roll was done in the year 2009; that the term for the year 2003 roll ended in 2013 and the County Government of Kilifi has initiated the process of coming up with a new valuation roll.
 14. In the meantime, it was deponed, the County Government is still relying on the valuation roll of the year 2003 and the subsequent supplementary valuation rolls.
 15. The County Secretary finally deponed that not only has the Petition been prematurely filed but also that the same amount to an attempt on the part of the Petitioner to abuse the process of the court to avoid paying rates to the Respondent.
 16. In his Further Affidavit, the Petitioner has averred that Mohsen Mohamed Taib and Johra Ali Ahmed were the legal administrators of the estate of his late father; that he is the legal heir and beneficiary of the estate of his late father and that the estate of his late father has since been divided according to the beneficiaries' shares even though no official transmission has been done to effectuate the names of the beneficiaries, including himself.
 17. According to the Petitioner, the suit properties were vested in him by the administrators; that Article 260 of the Constitution defines property to include any vested or contingent right to, an interest in or arising from land and that being a heir, he has both vested and contingent right and interest in the properties thereby giving him the locus to file the petition.
 18. The Petitioner's advocate submitted that the Respondent, being a State organ is in breach of the

- constitutional provisions that implore it to address the needs of the public.
19. Counsel submitted that the Respondent issued to administrators of the Estate of their late father demand letters to pay for the accumulated rates; that the two administrators executed a transfer of title via a vesting assent to the Petitioner and that the said vesting assent gave him full ownership and title over the two suit properties.
 20. Counsel submitted that pursuant to the provisions of Article 22 (1) of the Constitution, the Petitioner has each and every right to institute the Petition.
 21. The Petitioner's advocate reiterated the depositions of his client's affidavit and submitted that the decision by the Respondent to levy rates amounting to Kshs.16,862,200 was discriminatory and meant to strip the Petitioner of his land.
 22. The Respondent's counsel submitted that the Petitioner lacks the locus standi to bring the Petition; that the demand notices in issue were sent to the registered proprietors of the suit properties and that the Petitioner is not a rateable owner in respect of the rateable properties.
 23. Counsel submitted that the Petitioner has not exhibited the Certificate of Confirmation of Grant showing the list of beneficiaries of the Estate of Mohamed Ahmed Taib.
 24. The Respondents' counsel submitted that the purported "vesting assent" annexed on the Further Affidavit has signatures which were not attested; that it is not registered and that the same is not dated.

Analysis and findings:

25. In the Petition before me, the Petitioner is seeking for two substantive orders: A declaration that the outstanding land rate arrears demand together with accumulated penalties to the tune of Kshs.16,862,200 made by the Respondent is illegal and an order directed to the Respondent restraining it from interfering with the Petitioner's enjoyment of his land.
26. The first issue that I should determine is whether the Petitioner has the locus standi to institute this suit.
27. In the Affidavit in Support of the Petition, the Petitioner deponed that he is the owner of plot number 7710 and 7703 situated in Kikambala within Kilifi County. To support this deposition, the Petitioner annexed on the Affidavit two Certificates of Title for subdivision number 7710 and 7703 (original number 7703(original number 7702/2 of Section III Mainland North).
28. According to the two Certificates of Title, they were registered in Mombasa lands registry as CR54919/1 on 6th February 2012 in the names of Mohsen Mohamed Taib and Johra Ali Mohamed (as administrators). The Petitioner has not denied that the plots numbers 7710 and 7703 are not registered in his name.
29. According to the "Demand Notices" dated 13th June 2013 annexed on the Petitioner's Affidavit in respect of plot numbers 7710 and 7703/2, the rateable owners are indicated as Mohsen Mohamed Taib and another.
30. The position as to the registered owners of plot numbers 7703/III/MN and 7710/III/MN as at 25th March 2014 is reiterated in the Certificates of Postal Searches annexed on the Respondent's Replying Affidavit.
31. To show that he has a legal interest in the suit property, the Petitioner has annexed on his Further Affidavit an undated "Vesting Assent" in respect of plot number 7710. The said "Vesting assent" is purportedly signed by Mohsen Ahmed Taid and Johra Ali Mohamed. However, the said signatures are not witnessed.
32. The Petitioner's advocates submitted that the Vesting Assent that has been produced in this court by the Petitioner granted to the Petitioner an immediate right to present or future enjoyment of these properties.
33. The Petitioner's advocate has not referred this court to any law or legal authority which states that one can acquire a legal or a beneficiary right in land on the basis of an undated, unattested and unregistered "Vesting Assent".
34. The so called "Vesting Assent" annexed on the Petitioner's Further Affidavit does not amount to a conveyancing document that can pass interest in land from the administrators of the Estate of the deceased to the Petitioner or at all.
35. The Petitioner has not informed this court the status of "Succession Cause NO. 106 of 1993" which has been mentioned in the "Vesting Assent."

36. Considering that Mohsen Mohamed Ahmed Taib and Johra Ali Ahmed were appointed the administrators of the Estate of the deceased, and the family of the deceased having subjected themselves to the provisions of the Law of Succession Act, it follows that the only people who have the legal standing to institute the current Petition are the two administrator of the Estate of the deceased.
37. The Petitioner in this matter did not present to this court a copy of the Certificate of Confirmation of Grant in the succession cause to enable the court to ascertain if indeed he is the one who is the beneficiary of the suit property. Instead, he has presented to this court an unenforceable document that cannot pass interest in land.
38. Section 7(1) of the Valuation for Rating Act has defined a Rateable Owner in respect of any rateable property as the owner of the registered property or a lessee of such property.
39. Having read the provisions of Section 7(1) of the Valuation of Rating Act, and on the basis of the documents before me, including the impugned demand notice for plots numbers 7710/9 and 7703/2/MN/111, I am satisfied that the Petitioner is not the rateable owner of the two parcels of land.
40. The above conclusion is indeed supported by the Petitioner's advocate's letter dated 19th June 2013 and annexed to the Respondent's Replying Affidavit. The opening paragraph of the letter states as follows:

“We refer to the above matter in which we are instructed by our client Mohsen Mohamed Taib who is the rateable owner for rateable properties plot number MN/III/7710/9 and MN/III/7703/2 situated in Kikambala Division within the County Council of Kilifi.”

41. It is not clear to this court how and when the Petitioner became a rateable owner in the place of Mohsen Mohamed Ahmed Taib as stated in the letter dated 19th June 2013.
42. It is true that Article 22(1) of the Constitution affords every person the right to institute court proceedings claiming that his right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened.
43. However, before the Petitioner herein can complain that his right to property and a fair administrative action in respect of the suit property has been denied, violated or is threatened, he must show that he is legally entitled to the property in the first place.
44. Having failed to show that his right to the suit property has crystallised, I find and hold that the Petitioner does not have the locus standi to institute and prosecute the current Petition.
45. On that ground alone, and without going into the merits of the Petition, I strike out the Petition dated 16th December, 2013 with costs.

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

O. A. Angote

Judge