



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 206 OF 2014

**JUSTINE KAZUNGU BAYA (*Suing on his own behalf and on behalf of the estate*
*of BAYA MWANYULE JEFA alias BAYA YAA.....*PLAINTIFF**

=VERSUS=

1. ALBERT KALAMA NZARO

2. THE LAND REGISTRAR KILIFI

3. PETER KAZUNGU KALAMA.....DEFENDANTS

RULING

1. Before me are two Applications, one by the 3rd Defendant dated 18th June 2015 and the other one by the Plaintiff dated 5th November, 2014. In the Application dated 18th June 2015, the 3rd Defendant is seeking for the following prayers:

(a) That the Plaintiff's Plaint filed on the 5th day of November 2014 be struck out on the grounds that:-

(i) It discloses no reasonable cause of action against the defendant;

(ii) It is scandalous, frivolous or vexatious or;

(iii) It may prejudice embarrass or delay the fair trial of the defendant's counter claim filed on the 24th of February 2015.

(iv) It is otherwise an abuse of the process of the court

(b) Cost of this application.

2. The Application is premised on the grounds that the court does not have jurisdiction over this matter; that the Plaintiff is a squatter; that a squatter does not have a legal right over a title holder and that the 1st Defendant is a first registered proprietor whose title is indefeasible.

3. The 3rd Defendant has deponed that the land adjudication exercise in Kadzonzo Madzimbani area started in 1979; that upon conclusion of the exercise, the Plaintiff lodged an objection against the

- 1st Defendant and that having lost the dispute, the Plaintiff cannot present a claim before this court.
4. The 3rd Defendant has further deponed that the Plaintiff's Plaint does not disclose any reasonable cause of action against the Defendants and that the issues raised in the Plaint relate back to the Land Dispute Tribunal Act which has since been repealed.
 5. In his Application, the Plaintiff is seeking for an order that an injunction be granted to prohibit the 1st Defendant from selling or dealing with property known as 146/Kilifi/Kadzonzo/Madzimbani pending the hearing of the suit.
 6. The Plaintiff deponed that there is no evidence indicating that he lost any objection proceedings; that the Land Dispute Tribunal was applicable at the time the dispute herein commenced and that the issues raised in the current Application should be raised at trial.
 7. I have considered the submissions filed by the parties' advocates.
 8. In his Plaint, the Plaintiff averred that at the time of his death on 15th February 2015, Baya Mwanyule Jefa was the owner of the parcel of land known as 146/Kilifi/Kadzonzo/Madzimbani; that sometimes in 1996, the 1st Defendant filed a land dispute in Kaloleni and that the Tribunal made a finding in favour of the deceased.
 9. It is the Plaintiff's case that the son of the 1st Defendant then filed an appeal at the Provincial Land Appeal Committee being Appeal No. 12 of 1997 which was dismissed.
 10. The Plaintiff has averred that when he conducted a search in the year 2014, he discovered that the 1st Defendant had fraudulently obtained a title in respect to the suit property.
 11. The documents before me show that when the 1st Defendant sued the Plaintiff's father, Baya M. Jefwa, before the Land Dispute Tribunal, he lost the dispute.
 12. The record further shows that when the 1st Defendant's son, Peter Kazungu Kalaman, filed an appeal with the Provincial Land Appeal's Committee in Land Appeal case number 12 of 1997, he lost.
 13. The record shows that despite losing the dispute in the Tribunal and the Appeal's Committee, Land Registrar still went ahead to issue a title deed to the 1st Defendant on 8th August 2013.
 14. It is therefore obvious that the Plaintiff's Plaint raises triable issues that cannot be termed as trivial, frivolous or vexatious.
 15. The circumstances under which the title deed in respect to the suit property was issued can only be dealt with by this court. Consequently, this court has jurisdiction to deal with those issues.
 16. In view of the documents and the affidavits before me, I disallow the 3rd Defendant's Application dated 18th June 2015 with costs to the Plaintiff.
 17. Having been awarded the suit property by the then Land Disputes Tribunal, which award was confirmed by the Appeals Committee. I find and hold that the Plaintiff has a prima facie case with chances.
 18. Consequently, I allow the Plaintiff's Application dated 5th November 2014 with costs.

Dated and delivered in Malindi this 19th day of February, 2016.

O. A. Angote

Judge