



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.73 OF 2015

OKOMBOLI ONG'ONG'A.....PLAINTIFF

=VERSUS=

1. MASHA NGAO

2. ROBERT GAMBO BUNJU

3. KATANA NGOTI JAMBO

4. CHRISPUS WANJE

5. OMAR TSOFWA MWENI

6. MAMA FATUMA

7. BABU WANJE.....DEFENDANTS

R U L I N G

1. What is before me is the Application by the Plaintiff dated 11th May, 2015, in which he is seeking for the following orders:-

(a) THAT a temporary order of injunction do issue restraining the Defendants/Respondents by themselves, servants, agents and/or employees from trespassing and/or interesting in any way with the plaintiff's quiet possession, use, occupation, development and proprietorship of the suit property that being all that piece of land known as plot number 20252/13 Title Number CR 30853 situated in Kilifi Town pending the hearing and determination of this suit.

(b) An order directed to the OCPD Kilifi police station to ensure compliance with the order issued by this honourable court.

The Plaintiff's/Applicant's case:

2. In his Supporting Affidavit, the Applicant has deponed that he is the registered owner of plot number 20252/13 (the suit property) situated in Kilifi town; that he purchased the said land from Pete Njiru Muracia and that before he purchased it, he did all the due diligence expected of him as

- a purchaser.
3. It is the Plaintiff's deposition that at the time of purchase, the property was vacant and had no structures at all.
 4. It is the Plaintiff's case that on 3rd April 2015, he was astounded to find several temporary structures erected on the suit property.

The Defendants'/Respondents' case:

5. In response, the 1st defendant deponed that the current and previous registered owners did not conform with the special terms of the lease; that in 1995, his grandfather, Simba Jambo, sought the assistance of the Chief and the then Provincial Commissioner against mistreatment as a result of their occupation of the suit land and that the orders being sought cannot issue since they have always been in occupation of the suit land.
6. I have considered the submissions filed by counsels.

Analysis and findings:

7. The documents before me show that the Plaintiff purchased the suit property measuring 0.4515 Ha and was transferred to him on the 11th February, 2015. On the same day, the property was charged to Kenya Commercial Bank.
8. The Plaintiff's case is that when he purchased the suit property, it was vacant. The Plaintiff has annexed the goggle map for 2015 showing the vacant plot.
9. The Plaintiff has also annexed the valuation report which was used by the bank to lend to the Plaintiff money.
10. According to the said valuation report dated 11th September 2014, the property was vacant and unoccupied at the date of inspection with no structural improvements.
11. Although the 1st Defendant has annexed on his affidavit a letter from the then Coast Provincial Commissioner dated 6th January 1995 referring to "mistreatment of innocent wanainchi" by a Mr. Njoroge, the said letter does not state the land in question. The same applies to the letter by the Assistant chief dated 5th March 2014.
12. I have considered the valuation report and I am satisfied, prima facie, that at the time the Plaintiff bought and charged the suit property, there were no structures on the land. If the land had any structures, I doubt that the bank would have used the grant as a collateral if indeed there were people living on the land.
13. Although the Defendant has claimed the Plaintiff has not abided by the terms of the lease, I am of the view that it is only the Lessor to the land who can complain about non observance of those terms and not the 1st Defendant.
14. I have also seen the photographs annexed on the 1st Defendant's Replying Affidavit showing a temporary structure surrounded by two other structures which are not complete.
15. If indeed the Defendants were on the suit property before the Plaintiff purchased it, then I would have expected to see a photograph of more than one house on the land which is not the case.
16. In the circumstances, and in view of the fact that the Plaintiff is the registered proprietor of the suit property, I find and hold that the Plaintiff has established a prima facie case with chances of success.
17. The Plaintiff is also likely to suffer irreparable loss if the Defendant continues putting up more structures on the land.
18. For those reasons, I allow the Application dated 11th May, 2015 as prayed.

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

O. A. Angote

Judge

