



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.73 OF 2014

1. ISLAM SAID ISLAM
2. MOHAMED SAID ISLAM
3. FATUMA SAID MASJERY
4. SWALEH SAID MASJERY
5. ARIF OMAR BAKOR.....PLAINTIFFS

=VERSUS=

1. MALIK MBASHEE MUGAMBA
2. KENYA PORTS AUTHORITY
3. NATIONAL LANDS COMMISSION.....DEFENDANTS

R U L I N G

1. What is before me is the Plaintiffs' Application dated 7th October, 2015 seeking for the following injunctive orders:-

(a) **THAT** a temporary injunction be granted restraining the 1st Defendant from by himself, his servants, authorized agent or any person working under his authority entering into, occupying, alienating, working or in any way whatsoever dealing with the land parcels Nos.263, 264, 265, 266 and 267 pending the hearing and determination of the suit.

(b) **THAT** temporary injunction be granted restraining the 2nd Defendant from in any way whatsoever, dealing in lands parcels Nos 263, 264, 265, 266 and 267 and compensating the 1st Defendant or any other person apart from the Plaintiffs pending the hearing and determination of this Application.

(c) **THAT** the 2nd Defendant only and exclusively with the Plaintiffs, when it comes to compensation for plot Nos 263, 264, 265, 266 and 267 (sic).

(d) THAT the costs of this Application be provided for.

2. The Applicants' case is that they are the proprietors of plot numbers 264, 265, 266 and 267 respectively; that they are the ones in actual possession of the said plots due to their customary rights and that the 1st Defendant has cancelled the Plaintiffs' names from the official list of owners of plots and then replaced with his name.
3. According to the Plaintiffs, the 2nd Defendant is in the process of acquiring the parcel of land allocated to the Plaintiffs and has agreed to compensate the owners; that the 2nd Defendant should not compensate people who are not owners of the plots and that the 1st Defendant is not the owner of the suit property.
4. The 1st Plaintiff has deponed that the suit property has not been surveyed and is unregistered.
5. It is the 1st Plaintiff's deposition that in the year 2010, the elders, under the auspice of Langoni Council of Elders sub-divided the suit property and had it numbered with a view of facilitating the registration of its ownership and that after the said subdivision, the Plaintiffs were allocated the five portions.
6. The 1st Plaintiff has deponed that in the year 2012, the 1st Defendant caused a new listing to be made, which, according to the 1st Plaintiff, is irregular.
7. It is the Plaintiffs' case that in the new list, the Plaintiffs' names were deleted and replaced by the 1st Defendant's own name and that the 1st Defendant is being unscrupulous and wants to acquire property rights that do not belong to him.
8. Counsels filled their respective brief submissions which I have considered.
9. It is not in dispute that neither the Plaintiffs nor the 1st Defendant have the title documents in respect to the suit property.
10. According to the Plaintiffs, the Langoni Council of Elders included their family in the list of the people who are entitled to the suit property. However, the Plaintiffs' family name was replaced by the name of the 1st Defendant.
11. Considering that indeed the list produced by the Plaintiffs shows that the Bakor family was entitled to the suit property, it is important that the status quo be maintained pending the determination of the rightful owner of the land.
12. It is only after hearing the evidence that the court will be able to determine the proprietary rights of the parties herein.
13. In the circumstances, I find that the Plaintiffs have established a prima facie case with chances of success. I therefore allow the Application dated 7th October, 2015 as prayed.

Dated, signed and delivered in Malindi this **15th day** of July, 2016.

O. A. Angote

Judge