



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.198 OF 2015

NARESH JAYANTILAL RANPURA.....PLAINTIFF

=VERSUS=

1. HALANE CONSTRUCTIONS CO. LTD

2. MOHAMED RASHID.....DEFENDANTS

R U L I N G

1. The Plaintiff's Application dated 28th October, 2015 is seeking for the following reliefs:-

(a) THAT this Honourable Court be pleased to issue an order of temporary injunction restraining the defendants/respondents either by themselves, their agents, servants, employees or otherwise howsoever from excavating, digging and/or removing coral boulders and/or any other material and/or in any matter interfering with the plaintiff's quiet and peaceful occupation and enjoyment of all that portion of land known as sub-division number 879 (original No.284/92) of Section III/MN pending the hearing and determination of this suit.

(b) THAT a mandatory order of injunction be issued compelling the defendants/respondents their agents, servants, assigns and/or employees to forthwith return the coral boulders illegally removed from plot numbers 879 (original No.284/92) of Section III MN; CR No.29462 and reinstate the property in the manner it was prior to their actions.

2. The Application is supported by the Plaintiff's Affidavit who has deponed that he is the registered proprietor of sub-division number 879 of Section III MN (the suit property); that he purchased the property for Kshs.1,600,000 and that on 26th October, 2015, he found there were bulldozers excavating boulders on his land.
3. The Plaintiff has deponed that the excavation has caused any continues to cause danger to the suit property; that he is now unable to develop the property because the excavation has defaced, devalued and degraded his property and that the Defendants do not have a right to use the suit property.
4. In response, Mr. Mezia Mkongo deponed that he is the licenced owner of the quarry; that the excavation of gravel material from "Mazia Mkongo" Quarry has been ongoing and that previously, the Ministry of Works and other clients have excavated gravel from his quarry without any objection from the Plaintiff or any other party.

5. It is the deposition of Mr. Mezia that the suit land was unlawfully registered in the name of the Plaintiff; that the Plaintiff has never occupied, possessed or used the suit property and that he is the one who is in exclusive possession, use and occupation of the suit land.
6. The 2nd Defendant deponed that at the request of an agent who sought construction, he approached Mr. Mazia Mkongo; that Mr. Mazia represented to him to be the owner of “Mezia Mkongo Quarry” and that Mr. Mezia showed him a copy of the licence, the Single Business Permit and the title for plot number 879/III/MN.
7. According to the 2nd Defendant, Mr. Mezia agreed to supply him with gravel material and that the said Mr. Mezia and his family reside on the suit property.
8. I have considered the submissions that were filed by the parties.
9. The Plaintiff's suit and Application are grounded on the fact that the Plaintiff is the registered proprietor of sub-division number 879/III/MN.
10. The Plaintiff has annexed on his Affidavit a Certificate of Title for the suit property.
11. According to the annexed Certificate of Title, the suit property was initially owned by MAZIA MKONGO who was issued with the title document on 14th February, 1997.
12. From the title, it would appear that MAZIA MKONGO BUSHUTI died and letters of administration were issued to Nyevu Mazia Mkongo, Grace Mazia Mkongo and Milisho Mazia Mkongo who transferred the land to Shabbir Noorali Imani on 2nd September, 2005. Mr. Shabbir then transferred the suit property to the Plaintiff on 22nd December, 2014.
13. Although the 2nd Defendant has deponed that he obtained a copy of the title document from Mr. Mazia Stanley Mkongo and his identity card before he started paying for the gravel, the said Mr. Mazia Stanley Mkongo's affidavit does not allude to the fact that he is the registered proprietor of the suit land.
14. The copy of the Certificate of Title that was given to the 2nd Defendant by Mr. Mazia was in respect to the first page, which shows that the registered owner on the face of it is one Mazia Mkongo.
15. As I have stated, the second page of the Certificate of Title shows that Mazia Mkongo is deceased. The purported owner of the suit property, Mazia Stanley Mkongo, seems not to be Mazia Mkongo, the initial registered owner.
16. If the 2nd Defendant had conducted a search, he would have realised that it is the Plaintiff who is the registered owner of the suit property and not Mazia Stanley Mkongo or Mazia Mkongo.
17. The question as to whether the suit property was unlawfully registered in favour of the Plaintiff can only be answered conclusively once viva voce evidence has been tendered.
18. However, considering that the Plaintiff is the registered owner of the suit property, I find and hold that he has established a prima facie case with chances of success.
19. It is also obvious that the quarrying of the suit property will waste the land, thus causing the Plaintiff irreparable damage that cannot be compensated in damages, in the event that he succeeds.
20. In the circumstances, I allow the Application in terms of prayer numbers 3, 5, 6 and 7.

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

O. A. Angote

Judge