



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**ELC CASE NO. 265 A OF 2014**

SUDI HAMISI .....PETITIONER

AND

MATANO JUMA MBARUKU

LAND REGISTRAR KWALE

HON. ATTORNEY GENERAL.....RESPONDENTS

**RULING**

1. The Petitioner moved this Court under Rule 12, 19, 23(1), 24, 20 and 21 of

of the Constituion (Protection of Rights and Fundamental Freedoms)Practice and Procedure Rules 2013 and article 22 (4), 23 (3) (b), (c) of the Constituion. In the motion, the Petitioner sought an order ;

1) Spent

2) Spent

3) That a conservatory order be issued prohibiting and restraining the respondents or any other person from alienating, meddling in, transferring, attempting to transfer or holding themselves out as owners and howsoever interfering with the land parcel No Kwale/Mkongani/B'/295 measuring 17.55 Ha pending hearing and determination of the Petition herein.

4) The costs of the application be provided for.

2. The motion is supported by the affidavit of Sudi Hamisi and the grounds listed on the face of the application. In the Supporting affidavit, the applicant annexed copies of the following documents ;

- Letter dated 24.10.2013 from DLA and S Officer Kwale /Msambweni.
- Certificate of official search issued on 27.10.2014

- **Chief's letter dated 7.1.76**
- **Photographs**
- **Green card for parcel No Kwale/Mkongani B/295**
- **Ruling and Decree in ELC 66 of 2014**

3. The application is opposed by the 1<sup>st</sup> Respondent vide a replying affidavit filed. In the replying affidavit, the 1<sup>st</sup> Respondent pointed out errors on the face of the application which does not go into the roots or the substance of this claim. He has admitted as much as that they are confusions made by the applicant. As regards the substance, the 1<sup>st</sup> Respondent, deposed that the search reveals he is the owner of the suit land free from all encumbrances. He also deposed that the applicant has not annexed any evidence of ownership of the suit property.
4. I have seen the Petitioner's submissions on record. I have not seen for the 1<sup>st</sup> Respondent although an indication was made that they had been filed. The Petitioner submits that the decree issued in ELC 66 of 2014 made no declaration and that the decree needs to be investigated. He also submitted that he is in occupation of the said land and stands to suffer irreparable loss if the orders herein are granted.
5. For the orders to be granted, the applicant ought to lay a basis of having a prima facie with probability of succeeding. The applicant deposes that he owns the suit land. In his affidavit, he deposed to have annexed a title deed. As pointed out by the 1<sup>st</sup> Respondent, annex SH 1 (a) is a letter from the adjudication office confirming that plot No 375 Mkongani B is recorded in the name of Sudi Hamisi (applicant).
6. The applicant did not create any link between plot No 375 which is in Mkongani B adjudication Section and the suit plot. The annexed certificate of search and certified copy of the register do show that the 1<sup>st</sup> Respondent as the owner of the suit property. Lastly in the chief's letter dated 7.1.76 which the applicant deposes as an agreement does not identify any parcel number or the land in question.
7. The applicant's own documents do not support his claim to the land. The applicant stated that he lives on the suit land which the 1<sup>st</sup> Respondent now wants to evict him from. The applicant deposes that the 1<sup>st</sup> Respondent is using the decree in ELC 66 of 2014. The decree struck out the applicant's suit for being time barred. It did not give any eviction orders. The applicant has not demonstrated to this Court that there have been any attempts by the 1<sup>st</sup> Respondent to evict him from where he lives. Such attempts if any were not stated on the grounds on the face of the application or the affidavit in support thereof. Lastly, the applicant has shown the Court that the suit plot Kwale/Mkongani B/295 is owned by the 1<sup>st</sup> Respondent. This court has not been shown any cause why the 1<sup>st</sup> Respondent should be restrained from dealing with the plot since his registration as the owner has not been concluded as fraudulent.
8. In conclusion, I find no merit in the application and dismiss it with costs to the 1<sup>st</sup> Respondent.

**Ruling Dated, Delivered and Signed at Mombasa this 13<sup>th</sup> day of July 2016.**

**A. OMOLLO**

**JUDGE**