



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC PETITION NO. 4 OF 2015

KILLIAN MWAJANJANI MWANDORI & 696 OTHERS.....PETITIONERS

VERSUS

1. COASTAL HAULIERS LTD

2. UMOJA RUBBER LIMITED

3. GEOFFREY DAVID WEEKS

4. THE COMMISSIONER OF LANDS

5. THE DIRECTOR OF SURVEY KENYA

6. THE ATTORNEY GENERAL.....RESPONDENTS

AND

MAJENJENI FARMERS ASSOCIATION.....INTERESTED PARTY

R U L I N G

1. The Chamber Summons before me is the one dated 28th April, 2015 seeking for the following orders:-

(a) THAT there be a temporary injunction restraining the Respondents from evicting, harassing, and/or preventing the Petitioners from carrying out their usual daily activities including cultivating, accessing their respective portions including the right to occupy and/or from interfering with the Petitioner quiet possession of the suit property pending the hearing and determination of this application interpartes.

(b) THAT a temporary injunction be issued against the Respondents, restraining them from alienating, leasing, subdividing, selling, charging and/or wasting the suit property in any manner whatsoever pending the hearing and determination of this petition.

(c) THAT upon interpartes hearing, an injunction be issued in terms of prayer 2 and 3 above pending the hearing and determination of this Petition.

(d) That cost of this application be provided for.

2. The Application is premised on the grounds that the Petitioners have been in occupation of the land for many years; that the Respondents have threatened to burn down the Petitioners' houses and that the Petitioner's rights have been recognised by this court in Land Case No.183 of 2013.
3. According to the Petitioners, the Respondents required the consent of the Board to have the suit property transferred to the 1st – 4th Respondents; that the consent of the Board was never obtained and that they have fully developed the suit property.
4. In response, the 1st Respondent filed Grounds of Opposition in which he averred that the Petition does not disclose any reasonable cause of action against the 1st Respondent; that the 1st Respondent does not have an interest over plot number MN/IV/151 and that the Application is an abuse of the court process.
5. The 3rd Respondent deponed that she has no claim over plot number MN/IV/151; that she resides on the adjacent parcel of land and that the said property is registered in favour of her husband who passed on 7th November, 2008.
6. The 2nd Respondent averred that it has no interest whatsoever over the suit property; that it is the registered proprietor of land known as MN/III/1108 on which it has erected a manufacturing plant and that the suit property has never been transferred to the 2nd Respondent.
7. The Petitioners' advocate submitted that the Petitioners have since amended the Petition in which they have included Plots MN/IV/151, plot MN/IV/158, MN/IV/176, MN/IV/481 and MN/III/1108.
8. Counsel submitted that the suit property has since undergone subdivisions and changed ownership; that the 2nd – 4th Respondents are now harassing the Petitioners and that the Applicants and the entire Mijikenda communities were already residing within the 10 mile coastal strip long before the coming of the Respondents.
9. The 2nd Respondent's counsel submitted that there is no imminent or actual danger of the eviction of the Petitioners from the 2nd Respondent's parcel of land; that the 2nd Respondent's land has been fenced off and that the Petitioners have failed to established a reasonable degree of precision the constitutional rights that have been infringed.
10. The 3rd Respondent's advocate submitted that the Petitioners have failed to establish a prima facie case with a probability of success; that the 3rd Respondent is not in occupation of the suit property and that there is no nexus between this suit and ELC Case No. 183 of 2014.
11. It is trite that in determining whether or not to grant a conservatory order, the court must be satisfied that the Applicant has demonstrated a prima facie case with a likelihood of success and further that unless the court grants the conservatory orders, there is real danger that the Applicant will suffer prejudice as a result of the violation (**see Center of Rights Education and Awareness (CREAW) and 7 others Vs AG, Petition No. 16 of 2011, Nairobi**).
12. In establishing whether there is real danger, the Petitioner should demonstrate that the danger is imminent and evident, true and actual and not fictitious. An alleged threatened violation that is remote, will not attract the courts attention (**See Martin Nyanga Wambora Vs Speaker of the County Assembly of Embu & 3 others (2014) eKLR**).
13. Although the Chamber Summons dated 28th April, 2016 is seeking for conservatory orders restraining the Respondents from preventing them (the Petitioners) from carrying out their daily activities, the prayers do not describe the suit property.
14. It is only in the Affidavit and the Petition that the Petitioners mention the suit property to be MN/IV/151.

15. The Respondents have denied of having an interest in land known as MN/IV/151. Indeed, the 2nd Respondent an filed an Application seeking to be struck off from the proceedings.

16. Although the Petitioners reacted to the deposition of the 1st, 2nd and 3rd Respondents that they have no interest on the suit property by amending the Petition, they did not amend the Chamber Summons.

17. The Petitioners did not annex on their Affidavit the copy of he title or the official search for plot number MN/IV/151 or its subdivisions to enable court ascertain if indeed the Respondents have any claim in the land.

18. Considering that the Petitioners have not shown the nexus between the land they claim to be occupying and the alleged threats by the Respondents, I find and hold that they have not established a prima facie case with chances of success.

19. The alleged threat of their rights by the Respondents is remote and the same cannot be enforced as against the Respondents at this stage.

20. For those reasons, I dismiss the Application dated 28th April, 2015 with costs.

Dated, signed and delivered in Malindi this **16th** day of **September**, 2016.

O. A. Angote

Judge