



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.60 OF 2016

FREDRIC KIMANI KARIUKI.....PLAINTIFF/APPLICANT

=VERSUS=

AMU POWER COMPANY LIMITED.....DEFENDANT/RESPONDENT

R U L I N G

1. The Application by the Plaintiff dated 14th March, 2016 is seeking for the following reliefs:-

Pending the hearing and determination of this suit the Hon. Court be pleased to issue a temporary injunctive order against the Defendant, its agents, servants, employees and/or any other person acting on its behalf from interfering in any manner with Applicant's unregistered portion of land measuring 25 acres at Kwasisi area in the proposed coal plan project within Lamu County.

2. The Application is premised on the grounds that the Applicant is a bona fide purchaser for value; that the Applicant paid the entire purchase price to the original owner of the land and that the Respondent recognised the Applicant as the owner of the 25 acres within the proposed coal plant and included his name in the list of people to be affected by the project.

3. According to the Applicant, the Respondent has unlawfully deleted his name from the list of persons to be affected by the project.

4. It is the Plaintiff's case that since he purchased 25 acres of land in Kwasisi within Lamu County from Ahmad Mmaka Famu for Kshs.150,000, no one has ever claimed the land.

5. In response, the Defendant's Chief Operating Officer deponed that the transaction that was entered into by the Plaintiff and the vendor seems to have been entered into for the purpose of defrauding the people of Kenya in the name of compensation; that the sale was in respect of public land ear-marked for the construction of a power station and that it is the duty of the National Land Commission to deal with the acquisition of land for public purpose.

6. In their oral submissions, the parties' advocates relied on the depositions by their respective clients which I have summarised above.

7. The Plaintiff's case is that he purchased 25 acres of land from one Ahmed Mmaka Famu.

8. It is the Plaintiff's case that although the Defendant had agreed to compensate him for the land for the

proposed coal plant project, the Defendant later on deleted his name.

9. The Plaintiff has relied on the agreement that he entered into with one Ahmed Mmaka Famu dated 9th August, 2011.

10. According to the agreement, the vendor owned 64 acres of community land at “Kwasasi proposed coal plant area.”

11. The vendor has not sworn an affidavit to explain how he owns what he refers to as “community land.”

12. If indeed the suit property is part of what is described as “community land” in the agreement, then the same cannot amount to private land before the process of converting the land from community land to private land has been completed.

13. The failure by the vendor to show how he acquired the suit property before he purported to sell it to the Plaintiff, coupled with the fact that the agreement has defined the suit land as “community land” negates the argument that it is the Plaintiff who is entitled to compensation by the Defendant.

14. The Plaintiff has therefore not shown that he has a prima facie case with chances of success considering that it is the duty of the County Government of Lamu and the National Land Commission to deal with the acquisition of land for public purposes and not the Defendant.

15. From the Plaintiff's deposition, he is agreeable to be compensated for the suit property by the Defendant.

16. Consequently, from his own deposition, he will not suffer any irreparable damage that cannot be compensated by damages if the injunctive orders are not granted.

17. For these reasons, I dismiss the Application dated 14th March, 2016 with costs.

Dated, signed and delivered in Malindi this **14th** day of **September**, 2016.

O. A. Angote

Judge