



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.15 OF 2010

NGOMENI SWIMMERS LIMITED.....PLAINTIFF

VERSUS

1. ZEDI AHMED SAID
2. THE HON. ATTORNEY GENERAL
3. THE LAND REGISTRAR KILIFI
4. THE CHIEF LAND REGISTRAR
5. THE DIRECTOR OF SURVEYS
6. THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT
7. THE REGISTRAR OF TITLES MOMBASA
8. TABU TUVA KHONDE
9. KAHINDI KAINGU GONDA.....DEFENDANTS

AND

ST. PARTICK'S HILL SCHOOL.....INTERESTED PARTY

R U L I N G

1. What is before me is the Application filed on 7th March, 2016 by St. Patrick's Hill School Limited, an Interested Party in this matter.
2. In the said Application, the Applicant is seeking for the following orders:-
 - (a) **THAT an admission be recorded as an order of the court that the Plaintiff has no claim at all, now or in the future on plot no. 892 belonging to the Interested Party, St Partick's Hill School Limited.**
 - (b) **THAT the Plaintiff shall hold no claim whatsoever, now or in the future on plot no. 892**

belonging to the Interested Party St. Patricks' Hill School Limited.

(c) THAT the Plaintiff through its agents, representatives, assigns or successors hereafter be estopped from claiming at any time in future, or any shape or form any interest or title upon plot no. 892 belonging to the interested party St Patrick's Hill School Limited.

(d) THAT the court to be pleased to record this admission of facts as an order of the court.

(e) THAT the costs of the application be provided .

3. The Application is premised on the grounds that the Plaintiff has admitted at paragraph 3 of the Plaintiff's Reply to Defence and Defence to the Counterclaim that plot number 892 neither falls within the Plaintiff's plot nor does it form part of the Plaintiff's suit properties and that the admission is clear and unequivocal and therefore Judgment on admission should be entered.

4. In response, the Plaintiff's Director deponed that the suit herein is seeking for a declaration that the adjudication and survey that was done by the 2nd and 3rd Defendants and issuance of the Title Deeds to the 1st, 8th, 9th Defendants and the applicant was erroneous, illegal and unlawful and that the Plaintiff is the owner of land portion numbers CR 20119, CR20130, CR 24845 and 24846 and that if the Applicant's plot exists, then its existence is illegal.

5. According to the Plaintiff's Director, the contents of paragraph 3 of the Reply to Defence and Defence to the Counter-claim does not amount to an admission.

6. I have considered the brief submissions filed by the parties.

7. The law relating to a Judgment being entered on admission was set out in the case of **Choitram Vs Nazari (1984) KLR 327** where it was held as follows:-

“For the purpose of Order XII Rule 6, admission can be expressed or implied either on the pleadings or otherwise e.g in correspondence. Admissions have to be plain and obvious, as plain as pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning.”

8. In the case of **Cassam Vs Sachania (1982) KLR, 191**, the court held as follows:-

“The Judges discretion to grant Judgment on admission of facts under the order is to be exercised only in plain cases where the admission of facts are so clear and unequivocal that they amount to an admission of liability entitling the Plaintiff to Judgment.”

9. In its Further Amended Plaintiff dated 2nd March, 2015, the Plaintiff sued nine Defendants. The applicant is not one of the parties that the Plaintiff sued.

10. In the Further Amended Plaintiff, the Plaintiff averred that at all material times, it was the registered proprietor of land known as L.R.No. 20119, LR.NO.20130, L.R No 24845 and L.R No. 24846 all situated in Mambrui, Malindi.

11. The Plaintiff has averred in the Further Amended Plaintiff that in the year 2010, the Director of Land Adjudication and Settlement commenced an adjudication exercise in Mambrui notwithstanding the fact that the area had been surveyed; that the 3rd and 4th Defendants went ahead and issued Title Deeds under the repealed RLA and that the Title Deeds that were issued have overlapped the Plaintiff's parcel of land.

12. The Plaintiff has particularised the parcels of land that were adjudicated and Title Deeds that were issued to third parties, which according to the Plaintiff, have overlapped its parcel of land. One of the

parcels of land appearing in the Further Amended Plaintiff is plot number 892.

13. The Plaintiff is seeking for the cancellation of all the Title Deeds that were subsequently issued, including the Title Deed for plot number 892, amongst other orders.

14. On 25th February, 2015, the Applicant filed an Application seeking to be joined in the suit on the ground that its the owner of plot number 892. That Application was allowed whereafter the Applicant filed a Defence and Counter-claim.

15. In the Defence, the Applicant averred that all the Leases that were issued between the year 1994 – 1995, including the Plaintiff's Leases, were issued irregularly, unlawfully and fraudulently.

16. In the counterclaim, the Applicant has prayed for a declaration that it is the bona fide owner of parcels of land known as Ngomeni/Squatters Settlement Scheme/892.

17. The Plaintiff filed its Reply to Defence and Defence to the Applicant's Counter-claim. At paragraph 3 of the said Reply, the Plaintiff averred as follows:-

“The Plaintiff further states that it brought the suit herein against the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Defendants for claiming the Plaintiff's plot due to the issuance of overlapping Title Deeds hence on a keen scrutiny and the survey that has been conducted the interested party's alleged land does not at all fall within the disputed area or at all”.

18. The Applicant now claims that the above paragraph amounts to an admission of its claim in the counterclaim and that Judgment should be entered on that basis alone.

19. The quoted paragraph above is open to numerous interpretations.

20. Indeed, the paragraph could mean that the plot that the Interested Party is claiming is in a different area although the area that the Applicant is physically laying a claim on is where the plots that the Plaintiff is claiming are situated.

21. The paragraph can also be interpreted to mean that in law, the plot does not exist at all either because the Title Deed that was issued is a forgery or if it exists it is for a different parcel for land altogether.

22. The paragraph is therefore not a clear and unequivocal admission. Evidence will have to be led by the Plaintiff to prove that the Title Deed in respect of Plot No.892 was fraudulently issued or that the said Title Deed is in respect to land that does not fall within the suit properties.

23. This court can only make a determination on the legality of the Plaintiff's Leases and the Applicant's Title Deed and the position of each parcel of land on the ground after hearing the witnesses.

24. In the circumstances, I find the undated Application filed on 7th March, 2016 and dismiss it with costs.

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

O. A. Angote

Judge