



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.33 OF 2016

(formally Mombasa ELC No. 22 of 2016)

1. EDWARD MARENYE KIGURU

2. LILIAN MUTHEU TIMOTHY.....PLAINTIFFS

VERSUS

1. NYEVU KILANGO CHARO

2. KAVUE KILANGO a.k.a KAVUMBI KILANGO CHARO.....DEFENDANT

RULING

1. In their Application dated 16th February, 2016, the Plaintiffs are seeking for the following orders:-

(a) **THAT the Honourable court be pleased to grant Orders that the Defendant/Respondent, his servants, agent, and/or employees be restrained by way of temporary injunction from dealing, constructing, selling, wasting, damaging, intruding and trespassing, developing and/or interfering with plot number KILIFI/MTWAPA/393 (original) all situate in Ndoya area Mtwapa-Kilifi pending the hearing and determination of the instant application**

(b) **THAT cost of this Application be provided for.**

2. The Application is based on the grounds that the Defendants are the legal owners of the suit property which has been sub-divided into plot numbers 3414, 3415 and 3413; that the Plaintiffs purchased two acres of the suit property and that the Defendants are selling the sub-divisions to third parties.

3. The 1st Plaintiff deponed that although the court in Succession Cause No. 249 of 2008 directed the Respondents to obtain letters of administration, they have not done so and that the Respondents intend to defraud them.

4. In his response, the 2nd Defendant deponed that it is true that her, together with her co-wife, were the legal and beneficial owners of Plot No. 393A; that the said land has since been subdivided; that she has sub-divided her portion being Plot no.3415 into seven (7) portions for all her children and that she is a stranger to the allegations raised in the Application.

5. According to the 2nd Defendant, the agreement that was entered into by the Plaintiffs was between them and her co-wife and that she was not a party to that agreement.
6. In his submissions, the Plaintiff's advocate submitted that it is true that his clients entered into an agreement with the 1st Respondent and her sons; that the title to the suit property is in the name of the Defendants and that the Applicants had no way of determining the exact part of ownership by the two Respondents.
7. The 2nd Defendant's advocate submitted that his client was not a party to the alleged agreement of sale of land; that the suit property no longer exists and that the Application should be dismissed.
8. The Plaintiffs are seeking for an order of injunction in respect of plot number Kilifi/Mtwapa/393 (original).
9. In the Affidavit, the Plaintiffs have admitted that the suit property has since been subdivided into numerous plots. It is not clear in whose favour the various sub-plots have been registered.
10. Although the Plaintiffs have deponed that the two Respondents are the legal owners of the suit property, they have admitted that they only entered into the agreement dated 14th May, 2010 with the 1st Respondent and her sons.
11. It therefore follows that the Plaintiffs can only enforce the agreement of 14th May, 2010 as against the 1st Defendant and her sons and in respect to the portion that was allocated to them after the distribution of the Estate of the deceased.
12. The Plaintiffs cannot at this stage injunct the dealings in respect of the entire land known as Kilifi/Mtwapa/393 considering that the 2nd Defendant, being a co-owner in the suit land, did not sign the agreement of sale.
13. For those reasons, I find that the Plaintiffs have not established a prima facie case with chances of success.
14. Consequently, I dismiss the Application dated 16th February, 2016 with costs.

Dated, signed and delivered in Malindi this **4th** day of **November**, 2016.14.

O. A. Angote

Judge