



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 169 OF 2014

1. GEORGE MADEMU MUNGA

2. DAVIS MKOKA MUNGA

3. JOHANA BANDERA MUNGA

4. FRANCKLINE SHIDA MUNGA.....PLAINTIFF/RESPONDENTS

=VERSUS=

RODGERS CHIRIBA NYAMBU.....1ST DEFENDANT/APPLICANT

GEORGE BARUA.....2ND DEFENDANT/APPLICANT

R U L I N G

1. On 10th September 2014, the Plaintiff commenced these proceedings by way of a Plaint. From the Plaint, the Plaintiffs are seeking for an injunction restraining the Defendants from trespassing on plot number 125 Vinagoni. The Plaintiffs are also seeking for an order that the Defendants do give them vacant possession of the suit property. The Plaintiffs simultaneously file an application seeking for a temporary injunction pending the hearing of the suit.
2. The Defendants have filed a Notice of Preliminary Objection dated 1st October 2014 seeking to strike out the suit because the same is inherently incompetent, void and bad in law as it was instituted without complying with the mandatory provisions of Section 30(1) of the Land Adjudication Act. This Ruling is in respect to the said Preliminary Objection.
3. The Defendants' counsel submitted that pursuant to the provisions of Section 30 of the Land Adjudication Act, every proceeding of the nature herein must be instituted pursuant to a consent by the concerned adjudication officer.
4. Counsel submitted that the adjudication process in respect of the suit property has not been finalised; that the consent dated 23rd November 2004 was issued to the 1st Defendant pursuant to his request vide his letter of 22nd November 2004 and that the said consent was not a consent in rem.
5. On the other hand, the Plaintiffs' counsel submitted that there is no dispute that on 23rd November 2004, the District Land Adjudication and Settlement Officer (DLAJO) granted a consent to institute land suits in respect of the suit property; that following the consent granted by the DLAJO, Mombasa High Court Misc. Application Number 28 of 2005 was filed and that no new consent was needed to file subsequent suits.
6. The Defendants have not denied that on 23rd November 2004, the Kilifi District Land

Adjudication and Settlement Officer gave to the 1st Defendant consent “to institute or continue with civil proceedings in the court of law on the same P/No 125 within the same adjudication section...” the said officer further stated as follows:

“The Minister's Ruling made on 25th August 2004 was the final tribunal as per the Adjudication Act of which his decision can be challenged in court of law.....”

7. It is therefore obvious that the adjudication officer allowed the filing of the suit(s) by any party in respect of the suit property notwithstanding the fact that the consent was addressed to the Defendant and not the Plaintiffs.
8. Indeed, there have been suits in various courts and the Defendants cannot be heard to say that they are the only ones who were allowed to file suits and not the Plaintiffs.
9. Once the adjudication officer allowed the Defendants to institute suits in a court of law, it follows that both parties were allowed to litigate and have the final determination passed to the Director of Land Adjudication and Settlement Officer to implement.
10. In any event, the adjudication officer can only give his consent once there is a dispute and a dispute always involves more than one person. Having given the Defendants consent to litigate the issue of ownership of the suit property in court, he invariably, without stating so, gave to the Plaintiffs the consent to defend themselves and also file suits as against the Defendants in respect to the suit property.
11. In the circumstances, I find and hold that the Plaintiffs did not breach the provisions of section 30 of the Land Adjudication Act when they commenced these proceedings.
12. The Defendants' Preliminary Objection dated 1st October 2014 is hereby dismissed with costs.

Dated and delivered in Malindi this 13th day of February, 2015.

O. A. Angote

Judge