



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.171 OF 2014

SIMHI AZOMN.....PLAINTIFF/APPLICANT

=VERSUS=

JAMES MAROKO OSIEMO.....DEFENDANT/RESPONDENT

R U L I N G

Introduction:

1. In his Application dated 11th September 2014, the Plaintiff is seeking for the following orders:

- (a) That this Honourable court do issue orders directing the Applicant to evict the Respondent from the piece of land situated in North of Kilifi Town in the Kilifi district being reference number 1705/359 (original number 1705/84/24) delineated on land survey plan number 278859.
- (b) That the Honourable court be pleased to grant an order of temporary injunction restraining the Defendants/Respondents from constructing houses, selling portions of the land, cultivating, cutting trees, clearing bushes, fencing and/or in any manner interfering with the Applicant's plot situated in the North of Kilifi town in the Kilifi District being land Reference Number 1705/359 (original number 1705/84/24) delineated on land survey plan number 278859 pending the hearing and determination of the suit herein.
- (c) That the officer commanding Kilifi police station do provide security during the eviction exercise.
- (d) That costs of the application be provided

The Plaintiff's/Applicant's case:

2. The Applicant has deponed that he is the registered proprietor of land reference number 1705/359 (original number 1705/8412); that the Defendant sold to her the suit property in lieu of Kshs.400,000 that he owed him and that the Defendant has refused to give him vacant possession.

The Respondent's case:

3. In his Replying Affidavit, the Defendant has deponed that indeed, he owes the Plaintiff Kshs.400,000 being a friendly loan; that due to intimidation, influence, duress and fear of being

- arrested and prosecuted, he transferred the suit property to the Applicant and that his family shall be rendered destitute if evicted from the suit property.
4. The Plaintiff's and Defendant's advocates filed their respective submissions and reiterated the deposition in the affidavit.

Analysis and findings:

5. The Plaintiff has annexed on his affidavit a copy of the Certificate of Title showing that the suit property was transferred by the Defendant to him on 18th June, 2014.
6. According to the Defendant, he executed the Transfer document under duress and that he was not allowed to read the agreement.
7. The circumstances under which the sale agreement between the Plaintiff and the Defendant was entered into will have to be established during the hearing of the suit.
8. Consequently, I shall not, at this stage, order for eviction of the Defendant from the suit property as claimed by the Plaintiff. I shall also not grant to the Plaintiff the injunctive orders because that will amount to an order of eviction.
9. The most appropriate order is for the maintenance of status quo pending the hearing of the suit.
10. For those reasons, I dismiss the Application dated 11th September 2014 with no orders as to costs.

Dated and delivered in Malindi this 12th day of June, 2015.

O. A. Angote

Judge