



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.70 OF 2009

- 1. NELSON KAZUNGU CHAI**
- 2. LAWRENCE KAZAZI NZAU**
- 3. WYCLIFFE TEMBO MWANGOMBE**
- 4. SAID HASSAN HEMEED**
- 5. IBRAHIM ABDI**
- 6. FESTUS MWARERE LENGA**
- 7. KENGA KILUMO CHARI**
- 8. LEONNOX MKUTANO NGALA**
- 9. SHADRACK NDHULI**
- 10. PRUDENCE MAPENZI MWANGORI.....PLAINTIFFS**

/RESPONDENTS

=VERSUS=

PWANI UNIVERSITY.....DEFENDANT/RESPONDENT

AND

- 1. GEOFFREY NYANGAU GITAGA**
- 2. SIMON MRAMBA DAVID**
- 3. FESTUS WANJE MLANDA..... INTERESTED PARTIES/**

APPLICANTS

R U L I N G

Introduction:

1. What is before me is the Application by the Interested Parties dated 27th January, 2015. In the Application, the Applicants are seeking for the following reliefs:

(a) That the Honourable court be pleased to review its judgment delivered on the 31st day of October 2014 and the decree thereof issued on the 9th day of December 2014 by expunging plot no. L.R. NO. 5046/5 from the list of the suit plots in the record of the said judgment and decree.

(b) That there be stay of execution of the said judgment, decree and all the consequential orders pending the hearing and determination of this application.

(c) Costs be in the cause.

2. The Application is premised on the grounds that the Interested Parties reside in Kilifi on plot number 5046/5; that they learnt through the media that they are supposed to be evicted from the said property following the Judgment of this court and that neither the Plaintiffs nor the Defendants had a claim for plot number 5046/5.
3. The Defendant did not oppose the Application. The Plaintiffs filed Grounds of Opposition in which they averred that the court has no jurisdiction to grant the prayers pleaded and that the subject matter was part of the broad issues before the court and can only be ventilated in the Court of Appeal.
4. The Applicants' counsel submitted that there is an error apparent on the face of the record.
5. Counsel submitted that the Interested Parties did not participate in the proceedings that led to the Judgment of 31st October 2014 and that they are the ones in occupation of plot number 5046/5.
6. Counsel submitted that from the pleadings on record, the Plaintiffs claim was in respect of LR No. 5046/1 and 5024/1. Counsel submitted that none of the parties in the suit are claiming LR No.5046/5.
7. In response, the Plaintiffs' counsel submitted that this court is functus officio after it delivered its Judgment and that the issues being canvassed by the Interested Parties can only be canvassed on appeal.
8. The Plaintiffs moved this court by way of a Plaint. In the Plaint, the Plaintiffs sought for a declaration that part of parcels of land known as L.R. No.5046/1 and 5024/1 occupied are theirs. The Plaintiffs also sought for a permanent injunction restraining the Defendant from interfering with their possession of L.R. No.5046/1 and 5024/1.
9. In the Defence and Counter-claim, the Defendant averred that consequent to the compulsory acquisition of parcel of land known as L.R. NO.5046/1, 5046/2 and 5024/1 by the Government, Kilifi Institute of Agriculture, the predecessor of the Defendant, was established and occupied the said parcel of land.
10. In the counter-claim, the Defendant sought for the eviction of the Plaintiffs from LR. NO. 5046/1, 5024/1, 5046/2 and 5024/2.
11. On 31st October 2014, this court delivered its Judgment evicting the Plaintiffs and any other trespassers in occupation of the Defendants land being LR. 5046/1, 5024/1, 5024/2, 5046/2 and 5046/5.
12. The inclusion of LR NO.5046/5 in the Judgment was an error considering that there was no dispute in respect to the said land.
13. As I have already stated, the Plaintiffs' claim was only in respect of LR No.5046/1 and 5024/1. Neither the Plaintiffs nor the Defendant claimed in their pleadings that they have a legal or beneficial interest in LR 5046/5.
14. The inclusion of LR NO. 5046/5 in the Judgment and Decree is therefore a mistake and an error apparent on the face of the record. Neither the Plaintiffs nor the Defendant are claiming the said parcel of land. Indeed, the Defendant in whose favour the Judgment was delivered, is not opposing the Application.
15. For those reasons, I allow the Interested Parties' Application dated 27th January 2015 as follows:

(a) The Judgment delivered by this court on 31st day of October 2014 and the decree

thereof issued on the 9th day of December 2014 be and is hereby reviewed by expunging LR. NO.5046/5 from the list of the suit properties stated in the Judgment and the Decree.

(b) Each party to pay his/its own costs.

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

O. A. Angote

Judge