



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.220 OF 2014

JOSEPH MWARUA NDORO (*Suing as the administrator of the*

estate of KADII WANGARI KOMBE
(deceased).....PLAINTIFF

=VERSUS=

1. ONESMUS CHAI DZOMBO

2. MOHAMED ALI SAID

3. AHMED ABDUL KADHI.....DEFENDANT

R U L I N G

Introduction

1. What is before me is the Application by the Plaintiff dated 26th November 2014. In the Application, the Plaintiff is seeking for the following orders:

(a) **That this Honourable Court do issue an injunction against the Respondents herein either by themselves, agents, servants, employees or any other person acting for or on their behalf from trespassing, entering upon, remaining thereon, excavating, digging up, building or constructing thereon or in any way adversely dealing with the Plaintiff/Applicant Plot No. 55054/727 pending the hearing and determination of this suit.**

(b) **That costs be in the cause.**

The Plaintiff's/Applicant's case:

2. According to the Plaintiff's Affidavit, he is the administrator of the estate of his late sister, Kadii Wangari Kombe who is the registered owner of Plot No.693/VII/09, Mtaani/Kisumu Ndogo upgrading project together with his sister Kahsutu Wangari.
3. It is the Plaintiff's case that his two sisters were unable to raise money for the beacon certificate and other membership fees due to old age and for lack of employment; that he paid for his sister the fees for beacon certificate and that the Defendants encroached on plot 693 and secretly sold it to an Asian, Farida E. Jiwa, now deceased, in 1993.
4. It is the Plaintiff's case that due to the dispute on plot number 693, the Chairman of the project

directed that Kadii Ngari Kombe to be allocated plot number 379 and on that understanding he cancelled the letter of allotment in relation to plot number 693 and substituted it with plot number 379; that the Defendants then encroached on Plot No. 379 and that the Defendants have continued to infringe on his proprietary rights.

The Defendants'/Respondents' case:

5. In his Replying Affidavit, the 1st Defendant deponed that there is no annexure to the Plaintiff's Affidavit to confirm that Kadii was the registered owner of plot number 673 or that he is the brother of the late Ms Kadii; that the Defendants have not encroached on any plot belonging to the late Ms Kadii and that he is the registered proprietor of plot number 5054/727 at Mtaani Kisumu Ndogo within Kilifi town.
6. It is the 1st Defendant's case that after being allocated the suit property, he paid the requisite rent approval fee, planning fee and rates clearance certificate in respect of the plot; that even the Director of Criminal Investigations confirmed that the land is his and that he sold and transferred his rights of ownership in his property to the 2nd and 3rd Defendants.
7. The Plaintiff's advocate did not file any submissions. The Defendant's advocate submitted that the present application has not attained the standards for granting of an injunction.

Analysis and findings:

8. The Plaintiff is seeking for a temporary injunction to restrain the Defendants from encroaching and developing plot number 5054/727.
9. Although the Plaintiff is claiming that he is suing on behalf of his late sister who was allocated the suit property, he did not annex on the Affidavit either the Letters of Administration or Limited Letters of Administration to show that he has the locus standi to institute the suit.
10. Other than the failure to annex the letters of administration, the Plaintiff has not annexed a single document to show that indeed his late sister was allocated the suit property by the Chairman of Mtaani/Kisumu Ndogo upgrading project or at all as alleged in the Supporting Affidavit.
11. Instead, it is the 1st Defendant who has annexed on his Affidavit the letter of allotment that was issued to him on 27th March 1998.
12. The 1st Defendant has also annexed a letter from the Chairman of the project dated 24th October 2011. In the said letter, the Chairman confirmed to the Kilifi Town Council that indeed the suit property was allocated to the 1st Defendant.
13. The 1st Defendant's evidence to show that he is the one who is entitled to the suit property is also found in the letter by the Chief Land Administration Officer dated 20th May 2013 and the receipts of the payments for the land.
14. In the absence of any document to show that his sister had a better right over the suit property than the 1st Defendant's, I find and hold that the Plaintiff has not established that he has a prima facie case with chances of success.
15. For those reasons, I dismiss the Plaintiff's Application dated 26th November 2014 with costs.

Dated and delivered in Malindi this 17th day of **July** 2015.

O. A. Angote

Judge