



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.245 OF 2014

KENGA KAHINDI JEFWA.....PLAINTIFF/APPLICANT

=VERSUS=

- 1. KAMIMI COMPANY (1976) LIMITED**
- 2. MTWAPA HOLDINGS LIMITED**
- 3. KABIBI HOLDINGS LIMITED**
- 4. AYEM INVESTMENTS LIMITED**
- 5. MTSONGA KABILA CHIRO**
- 6. KHAMISI MOHAMED**
- 7. EMMANUEL FADHILI JEFWA**
- 8. MASHA MRAMBA MASHA**
- 9. ESTHER TSORAMBA TSULU**
- 10. BARANI POLE POLE SELF HELP GROUP**
- 11. ATTORNEY GENERAL**
- 12. THE NATIONAL LAND COMMISSION**
- 13. JOSEPH RUWA KALAMA**
- 14. SHAMI MFONDO.....DEFENDANTS/RESPONDENTS**

R U L I N G

1. What is before me is the Application by the Plaintiff dated 27th February, 2015 seeking for the following orders:

(a) That the court be pleased to issue warrant of arrest directed to the OCPD Kilifi

police division and the OCS Mtwapa police station for the arrest of JOSEPH RUWA KALAMA and SHAMI MFONDO for their arrest and production in court to show cause why they should not be punished for contempt of court for disobeying the orders of the court given on 10th February 2015.

(b) Cost of the application be provided for.

2. In his Affidavit, the Plaintiff/Applicant has deponed that on 10th February 2015, this court issued interim injunctive orders against the 1st to 12th Defendants; that the orders were served on the Defendants on 24th December 2014 and that the Defendants have invited people who are their conies who are disobeying the orders of the court.
3. It is the Plaintiff's case that he later on joined the 13th and 14th Defendants in the suit and on 10th February 2015, orders were issued against them; that even after service of the orders on the 13th and 14th Defendants, they have contemptuously went on with the activities they have been restrained from doing and that the 13th and 14th Defendants are sub-dividing the land and disposing it to the members of public.
4. The 13th Defendant filed a Replying Affidavit on his own behalf and on behalf of the 14th Defendant.
5. The 13th Defendant admitted that they were served with orders of the court dated 10th February 2015 and 19th December 2014 on 14th February 2015; that the Plaintiff is a squatter just like them; that the Plaintiff does not have a cause of action as against them and that they have lived on the suit property for many years.
6. The 14th Defendant deponed that he was served with the orders of this court on 14th February 2015; that the Plaintiff does not stay on the land; that there is another suit being Malindi HCCC No. 232 of 2014 (os) in respect of the suit property in which the court ordered for status quo to be maintained and that they have not disobeyed the orders of the court.
7. The 14th Defendant denied that they have dished out the suit property to members of the public and that the structures shown in the photograph were put up by Barani residents.
8. I have considered the submissions and authorities that were filed by the advocates for the Applicant and the Respondents.

Analysis and findings:

9. The 13th and 14th Defendants have admitted that they were served with the order of this court of 10th February 2015 on 14th February 2015.
10. In the order of 10th February 2015, this court stated as follows:

“That status quo order issued earlier on 6th January 2015 to apply to the 13th and 14th Defendants”.

11. The background of this matter is that on 19th December 2014, this court issued a temporary order against the 1st to the 12th Defendants restraining them from destroying structures, erecting fences, trespassing, taking possession or any in any other way dealing with the Plaintiff's property known as plot number 337 (original number 313/3/Section III Mtwapa).
12. When the matter came up for interpartes hearing on 6th January 2015, the court ordered for the maintenance of status quo until 12th February 2015. This court directed the status quo order that was issued on 6th January 2015 to apply to the 13th and 14th Defendants on 10th February 2015.
13. Although the Plaintiff has alleged that the 13th and 14th Defendants are selling the suit property to the members of the public, there is no evidence before me to show that the 13th and 14th Defendants have sub-divided the suit property with a view of selling it.
14. There is also no evidence before me to show that the Defendants have changed the status quo that was prevailing on 14th February 2015 when they were served with the orders of this court.

15. Although the Plaintiff annexed on his supplementary affidavit a CD which contains the recording of meetings that the 13th and 14th Defendants have been holding on the suit property, the said CD was not played in court to enable the Respondent to respond to it.
16. The dispute before me cannot be resolved by the filing of Applications like the current one. Having ordered for the maintenance of the status quo, the parties should fix the matter for hearing so that the court can determine with finality the issue of ownership.
17. Once the issue of ownership is determined, it will not matter who has put up structures on the disputed land.
18. In the circumstances, I dismiss the Plaintiff's Application dated 24th February 2015 with costs.

Dated and delivered in Malindi this 30th day of October 2015.

O. A. Angote

Judge