



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT
AT MALINDI
LAND CASE NO. 128 OF 2013

COAST LAND INVESTMENT LTD.....PLAINTIFF/APPLICANT

=VERSUS=

1. RODGERS KAZUNGU KARABU

2. KAHINDI KARABU

3. UMMI OMAR BUNU

4. ALI ABDALLAH

5. SAMSON MAPINGA

6. SAFARI KAINGU.....DEFENDANTS/RESPONDENTS

R U L I N G

Introduction

1. What is before me is the Plaintiff's Application dated 31st July 2013 and filed on the same day. In the Application the Plaintiff is seeking for the following orders:-
 1. **That the Defendants/Respondents by themselves, their agents, servants, workers, employees or any other person acting on their behalf be temporarily restrained from entering, remaining, trespassing, constructing any structures, barbed wire fence and or dealing in any manner with the Plaintiffs/Applicant's portion No. 234 Mambrui, pending the hearing of this suit .**
 2. **That the costs of this suit be provided for.**
2. The Application is premised on the grounds that the Plaintiff is an innocent purchaser of the suit property for valuable consideration having purchased the same from one Salim Omar Bathelf in 1993 and that the Defendants have trespassed and entered on the suit property and have started erecting structures thereon.

The Plaintiff's/Applicant's case:

3. The Application is supported by the Affidavit of Mario Nuzzo, the Plaintiff's director. The said director has deponed that the Plaintiff is the registered proprietor of portion number 234, Mambrui having purchased it in 1993.
4. According to the Plaintiff's director, the Plaintiff has been in occupation of the suit property without any interference until on 23rd July 2013 when the Defendants trespassed on the suit property and forcefully started constructing thereon. The Defendants, it was deponed, have continued to commit acts of trespass and unless restrained by this court, the Plaintiff shall be deprived of its property and shall consequently suffer irreparable loss.

Defendant's case

5. The 6th Defendant filed his Replying Affidavit on 21st August, 2013 and deponed that himself, together with the 1st and 2nd Defendants, have been in occupation of the suit premises since they were born and that the suit property is the only place they know as their home; that they have developed the suit property without any interference.
6. The 6th Defendant further deponed that the leasehold over the suit property by Said Omar Abuod Balheif expired in 1993 and he had no right to sale and transfer the same to the Plaintiff in 1993; that the lease having expired reverted to the Government and that the Defendants, through their association paid a deposit of Kshs.80,000/- to the County Council of Malindi.
7. The 6th Defendant finally deponed that the 3rd, 4th and 5th Defendants are purchasers for value and that the Plaintiff's Application is an abuse of the court process.

The Plaintiff's Supplementary Affidavit

8. The Plaintiff filed a Supplementary Affidavit on 13th September 2013 and deponed that the Defendants do not have homesteads on the suit property; that the Defendants leave on a road reserve; that the title is freehold and not leasehold and that the demand letter for the payment of the rates by the Municipal Council of Malindi was addressed to the Plaintiff and not to the Defendants. The parties agreed to dispose of the Application by way of written submissions which I have considered.

Analysis and findings

9. The Plaintiff has annexed on its Supporting Affidavit the title in respect to portion number 234 Mambrui that was issued to Mohamed Haji bin Mlagi on 17th November 1925. The said certificate of ownership was issued pursuant to the Land Titles Ordinance of 1908. A provisional certificate was subsequently issued on 2nd June 1971. The suit property was then transferred to Said Omar Batheif alias Said Omar Abuod Batheif on 14th September 1971. Said Oman Batheif then transferred the property to the Plaintiff on 9th September 1993.
10. The Plaintiff has also annexed on its Affidavit the Certificate of Postal Search as at 26th April 2013 which shows the registered owner of plot number 234, Mambrui as the Plaintiff. Also annexed on the Affidavit is the rates receipt from the County Council of Malindi dated 12th July 2013 evidencing the payment of Kshs.126,807 by the Plaintiff in respect to the suit property.
11. The Defendants deponed that the Plaintiff could not have rightly purchased the suit property in 1993 as alleged because by that time, the lease in favour of Said Omar Batheif had already expired. The copies of the title and the certificate of postal search placed before me shows that the suit property is freehold and registered under the repealed Land Titles Act. The Defendants have not placed before me any evidence to show that the property in question was a leasehold. The question of the title in respect of the suit property having expired does not therefore arise.
12. Although the Defendants' case is that the 1st, 2nd, and 6th Defendants have been in occupation of the suit property since time immemorial, the Defendants have not offered any explanation as to the circumstances under which they occupied the suit property. The 1st, 2nd and 6th Defendants have also not stated whether the three of them have been in occupation of the entire 220 acres or just a portion of the land.

13. It would appear, according to the annexures on the Replying Affidavit, that the 3rd Defendant purchased two (2) acres, being part of the suit property from one Ali Kaingu Mweni while the 4th defendant purchased his portion from the 6th Defendant. The 5th Defendant purchased three (3) acres from one William Charo Thoya.
14. The Defendants did not offer any explanation as to the capacity in which the vendors sold part of the suit property to the 3rd, 4th and 5th Defendants in view of the fact that the property was registered in the name of the Plaintiff at the time of the alleged sale. The legal standing of the vendors is questionable.
15. In the circumstances, and in view of the fact that the Plaintiff is the registered proprietor of the entire suit property, I find and hold that the Plaintiff has shown that it has a prima facie case with chances of success.
16. The Plaintiff has also shown that if the Defendants are allowed to continue with the encroachment on the suit property, it is likely to suffer irreparable loss. The Defendants and their agents are likely to lose to dispose of the suit property to unsuspecting members of the public.
17. For the reasons I have given above, I allow the Plaintiff's Application dated 31st July 2013 as prayed.

Dated and Delivered in Malindi this 24th Day of **February**, 2014

O. A. Angote

Judge