



COPY

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC. NO. 90 OF 2012

ANTHONY GETAMBU

DR. ESTHER MUTHONI GETAMBU..... PLAINTIFFS

- V E R S U S -

PAUL KATANA KALALA Defendant

RULING

[1] The applicant in this case applied for a temporary order of injunction restraining the defendant either by himself, his agents or servants from interfering with the plaintiffs occupation and possession of parcels Kilifi/Roka/1237 and 1238. He further prays for a mandatory injunction to remove the defendant from the plaintiffs parcels of land aforesaid pending the hearing of this suit. The plaintiffs claim that they are the registered owners of the said lands and they exhibited the title deeds therein, the titles for 1237 having been issued on 2nd February, 1993 and that of 1238 having been issued on 6th November, 1992

[2] The defendant stated that he entered the land in 1985 having been authorised by the Chief of his area to do so. He avers that he has already built permanent and semi permanent houses thereon. he exhibited photographs showing his houses.

[3] I have perused the various submissions by counsel for the applicant and counsel for the respondent and considered them thoroughly. It is not denied by the plaintiff that the defendant has not settled on the suit premises and has constructed his houses. He lives there. The applicant asks the court to injunct the respondent over what has already been done. Order 40 1 (a) and (b) are provisions for stopping a property in danger of being wasted from actions that would end in wasting it. It is not a provision for reversing what is already done.

[4] The second claim of mandatory injunction to remove the defendant from the plaintiffs parcels, 1237 and 38 pending the hearing of the suit cannot be done at this stage. A closer look at the plaint dated 27th March, 2012 will reveal that Para 8 (b) (c) and (d) asks for the same and/or similar prayers. If this prayer is granted, I will have determined the suit without having had the opportunity of having heard the parties to this suit. This will lead to a miscarriage of justice. This application cannot be granted. However since the plaintiffs are the registered owners, a fact not disputed by the defendants, I will order that status quo shall be maintained, there shall be no further construction, selling, leasing and any other transaction in regard to the suit properties until this suit is heard and/or further orders from this court. Costs of this application shall be in the suit.

Dated and delivered in open Court at Mombasa this 27th day of March, 2014.

S. MUKUNYA

JUDGE

27.3.2014

In the presence of:

Mr. Wachira Advocate for the plaintiffs/applicant

Ngunga Mwinga Advocate for the respondent
