



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT OF KENYA

AT MALINDI

MISCELLANEOUS APPLICATION NO. 12 OF 2013

ANTHONY KOMBE DHURI.....APPLICANT

=VERSUS=

KENNETH JOSEPH NYULE.....RESPONDENT

R U L I N G

Introduction

1. The Applicant's Application is dated 3rd October 2013 seeking for the following orders:

(a) That the Land Appeal Case No. 24 of 2009 ANTHONY KOMBE DHURI-VS-KENNETH JOSEPH NYULE pending before the Provincial Land Appeals Committee at Mombasa be transferred to this court for hearing and determination.

(b) THAT there be a stay of the execution of the Judgement and Decree in Kaloleni Principal Magistrate's Court Land Award Case No. 19 of 2009-KENNETH JOSEPH NYULE-VS-ANTHONY KOMBE DHURI Passed on 12th May 2009 and the decision of the Kaloleni Land Disputes Tribunal case No.LND/KAI/41/2006-KENNETH JOSEPH NYULE-VS-ANTHONY KOMBE DHURI made on 18th March 2009 pending the hearing and determination of the Appeal herein.

(c) THAT a temporary injunction do issue against the Respondent, restraining the Respondent by himself his servants and/or agents and/or any person claiming through him, from selling, leasing, transferring and/or constructing any building or cultivating on the suit properties being all that unregistered portion of land situated at HADEMU in Kaloleni within Kilifi county opposite HADEMU PRIMARY SCHOOL and HADEMU TRADING CENTRE and measuring 0.75 hectares or thereabouts and numbered B in the sketch map annexed hereto and marked "AK-4" pending the hearing and determination of the Appeal.

The Applicant's Case:

2. According to the Applicant's Affidavit, he filed his appeal with the Provincial Land Appeals Committee at Mombasa within 30 days of the decision of the Kaloleni Land Disputes Tribunal Case No. LND/KAI/41/2006 which was delivered on 18th March 2009.
3. It is the Applicant's deposition that all the appeals which were pending before the defunct Land Appeals Committee ought to be transferred to this court and that the Respondent has been showing

- people the suit property with the intention of selling some portions thereof.
4. The Applicant finally deponed that the status quo that existed was that he was the one in possession of the land and that if the suit is sold, it will render the appeal nugatory.

Respondent's Case:

5. The Respondent filed a Replying affidavit on 27th November 2013 and stated that the Applicant is guilty of laches; that the Applicant has never been in possession of the suit land and that the appeal that was filed by the Applicant at the Land Appeals Committee is a sham and has no chances of success.
6. The parties filed their respective submissions which I have considered.

Analysis and Findings

7. The Applicant has annexed on the Supporting Affidavit a letter dated 8th April 2009 from the Provincial Land Appeals Committee acknowledging that the Committee had received the Applicant's Appeal and registered it as case number 24 of 2009. In the said letter the Appeals Land Committee directed the parties to maintain the status quo and that there should be no interference on the disputed land until the case is determined by the Land Appeals Committee.
8. It is true that when the Land Disputes Tribunal Act, Cap 303 A was repealed, all the pending appeals before the Land Appeals Committee were to be forwarded to this court for hearing and disposal.
9. In view of the fact that the said appeals are to be forwarded to this court by operation of the law, this court can do no more than adopt the interim orders that were made by the defunct Provincial Land Appeals Committee. As I have already stated, the Appeals Committee had already ordered for the maintenance of the status quo pending the hearing of the appeal. In the circumstances, and for the reasons I have given above, I allow the Applicant's Application dated 3rd October 2013 in the following terms;

(a) The Land Appeal case number 24 of 2009, Antony Kombe Dhuri-vs-Kenneth Joseph Nyule pending before the defunct Provincial Land Appeals Committee at Mombasa be transferred to this court.

(b) Both parties to maintain status quo and that there should be no interference on the disputed land whatsoever until the appeal is determined by the court.

Dated and Delivered in Malindi this 21st Day of **March 2014**

O. A. Angote

Judge