



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT OF KENYA
AT MALINDI
LAND CASE NO. 237 OF 2013

KATANA KAHINDI MASHA.....PLAINTIFF/APPLICANT

=VERSUS=

KARISA WANJE MASHA

SIDI WANJE MASHA

WANJE MASHA.....DEFENDANTS/RESPONDENTS

R U L I N G

Introduction

1. The Plaintiff has filed an Application dated 18th December, 2013 pursuant to the provisions of Order 40 Rule 1 (c), 2 (1), and 4 (1) of the Civil Procedure Rules and Section 13 (1) and (7) of the Environment and Land Court Act. The Plaintiff is seeking for the following orders;-
 - a. **That at the Inter-parties hearing a Temporary Injunction be issued against the Defendants, restraining the Defendants by themselves, their servants, agents or any person claiming through them from trespassing, occupying, further constructing upon or cultivating upon, selling, transferring all that unregistered parcel of land situated at Lango Baya village within Kilifi County in the Republic of Kenya containing by measurement 2 acres or thereabouts and within the Plaintiff's 5 acres parcel of land pending the hearing and determination of this suit.**
 - b. **That the costs of this application be in the cause.**

The Plaintiff's/Applicant's case:

2. According to the Plaintiff, he is the owner of all that unregistered parcel of land situated in Lango Baya within Kilifi County measuring 5 acres.
3. It is the Plaintiff's deposition that the suit property is bordered to the West by the land owned by the 3rd Defendant measuring 1½ acres and that their boundaries are clearly demarcated on the ground.

4. However, in the year 2012, the Defendants started claiming a portion of his land measuring approximately 2 acres; that the dispute was referred to the village elders and the same was resolved in favour of the 3rd Defendant.
5. On the basis of the decision of the elders, the Defendants proceeded to erect building poles on the said land and that they have continued to trespass and construct houses and other structures on the land.

The 3rd Defendant's case

6. The Defendant filed an affidavit in which he deponed that he is the lawful owner of the suit property; that the land in dispute belongs to the members of Were Group Ranch and that the Plaintiff and his late father are not members of the said Group Ranch.
7. According to the 3rd Defendant, it was him who gave to the Plaintiff's late father the disputed parcel of land and that he cannot claim that he inherited it from his father; that the suit property is registered in the name of Were Group Ranch and that the elders deliberated on the piece of land and a finding was made in his favour.
8. The Advocate for the Plaintiff and the 3rd Defendant filed their respective submissions and reiterated the averments made by their clients.

Analysis and findings:

9. The dispute herein involves a piece of land which both the Plaintiff and the 3rd Defendant who are related and neighbours are claiming.
10. Although the 3rd Defendant has annexed a copy of a title of land known as Weru Group Ranch measuring a whopping 9,546Ha, there is no evidence that the disputed piece of land falls within the said land.
11. According to the decision of the local elders, the piece of land in dispute belongs to the 3rd Defendant and not the Plaintiff. On that basis alone, and in the absence of any document to support the Plaintiff's case, I am in doubt if indeed the Plaintiff has a prima facie case with chances of success.
12. It would appear from the depositions by the parties that none of the parties has taken possession of the disputed piece of land measuring 2 acres. The photographs annexed on the Plaintiff's supporting affidavit shows the structures which are in the process of being put up.
13. In the circumstances, and considering that the suit property ought to be maintained in the status in which it is in pending the hearing of the suit, I shall, which I hereby do, order that the status quo prevailing now be maintained pending the hearing and determination of the suit. None of the parties should in any manner whatsoever deal with the disputed piece of land until the court makes further orders.
14. Each party shall bear his or her own costs.

Dated and delivered in Malindi this 16th Day of May, 2014

O. A. Angote

Judge