



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

LAND CASE NO. 26 OF 2014

(CONSOLIDATED WITH LAND CASE NO. 1'A' OF 2014)

ELIJA BARASA GALIDO.....PLAINTIFF/APPLICANT

=VERSUS=

AMON PETERO BUYA.....DEFENDANT/RESPONDENT

RULING

Introduction.

1. The Application before me is the one by the Plaintiff dated 20th February, 2014 filed pursuant to the provisions of Order 40 of the Civil Procedure Rules.
2. In the Application, the Applicant is seeking for the following orders:
 - a. **That pending the hearing and determination of this suit, there be issued an Interim injunction restraining the Respondent, his employees, servants and/or agents from entering into, farming, clearing bushes, or dealing in any manner with all that land known as Ghabia, situated in Hola, Tana River County belonging to the Applicant herein.**
 - b. **That the costs of this Application be provided for.**

The Applicant's case:

3. The Applicant has deponed that he is the beneficial owner of a parcel of land known as Rhugah situated in Malindi yangwena within Tana River County where he was born and brought up, which parcel of land he has developed and resides thereon with his family.
4. It is the Applicant's deposition that the dispute over the suit property started in 1971 when the Respondent's father interfered with the land and was sued by his elder brother in Hola Land case under 3 of 1971 which was decided in favour of his family. That the Respondent resumed his interference with the suit property in the year 2013 by entering the land and carrying out activities and that the Respondent has no interest or right over the suit property.

The Respondent's case:

5. The Respondent has deponed that the property has always been owned by his family from time immemorial and that the boundaries of his family's parcel of land is clearly demarcated on the ground and separated from the one owned by the Plaintiff by a dry river bed; that the Plaintiff is not a relative of Omar Komora Ali Galido who was a party in land dispute case number 3 of 1971 in which the Defendant's father was a party and that Plaintiff has not developed the suit property as alleged.

6. It is the Defendant's case that sometimes in the year 1969, a suit was filed at the Hola Court between his late father and one Michael Jilo in which it was held that the suit property belongs to the Defendant's family. A similar suit was filed in the defunct Land Disputes Tribunal and another decision favourable to the Defendant was delivered.

Submissions:

7. The Plaintiff filed his written submission which reinstated the averments in the Application. The Defendant's advocate did not file any submissions.

Analysis & findings:

8. This matter was consolidated with Malindi HCCC. No. 1A of 2014 in which Fares Jilo Dhadho is the Plaintiff. The common denominator in the two suits is the Defendant and the suit property. However, the Application before me was filed by the Plaintiff in this particular file, that is Malindi HCCC No. 26 of 2014.
9. The dispute before me is in respect to community land. Both parties are claiming that the suit property, which is unregistered, has been owned by their respective families since time immemorial.
10. It would appear that this dispute was before the defunct Land Disputes Tribunal and a decision was rendered by the said Tribunal. The decision of the Tribunal was adopted by the Senior Resident Magistrate on 5th February 2014 as was required by the provisions of the Land Disputes Tribunal Act (repealed).
11. While adopting the award of the Tribunal, the Magistrate quoted verbatim the Tribunal's award. The Tribunal, in its decision rendered on the 11th October 2011, stated that the Defendant herein was entitled to continue staying on the disputed parcel of land. The Tribunal further directed that a surveyor do re-survey and re-establish the boundaries in accordance with what the Tribunal had observed. In a nutshell the surveyor was to demarcate the two parcels of land from the middle of the dried up river.
12. The learned Magistrate adopted the award of the Tribunal as an order of the court. The Magistrate, correctly so, directed that any party who was aggrieved by the decision of the Tribunal should lodge an appeal in this court within 30 days.
13. Instead of filing an appeal in this court, the Plaintiffs in this case and in HCCC NO. 1 of 2004 have filed suits.
14. In view of the fact that the Tribunal allowed the Defendant to continue occupying the suit property and considering that there is no appeal filed against the decision of the Tribunal or an order staying the Tribunal's decision, I find and hold that the Plaintiff has not established a *prima facie* case with chances of success. The Plaintiff has also not shown which irreparable loss he will suffer if the injunctive order is not given in view of the fact that the Defendant is occupying the suit property.
15. For those reasons, I dismiss the Plaintiff's Application dated 20th February, 2014 with costs.

Dated and delivered in Malindi this 25th day of **July**, 2014.

O. A. Angote

Judge