



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 81 OF 2014

CLIFTON BAY LIMITED.....PLAINTIFF/APPLICANT

=VERSUS=

- 1. DIRECTOR OF PHYSICAL PLANNING**
- 2. DIRECTOR OF SURVEYS**
- 3. KILIFI COUNTY COUNCIL**
- 4. LAND CONTROL BOARD**
- 5. DISTRICT LANDS REGISTRAR-KILIFI COUNTY LANDS REGISTRY**
- 6. CHIEF LANDS REGISTRAR**
- 7. ATTORNEY GENERAL.....DEFENDANTS/RESPONDENTS**

R U L I N G

Introduction:

1. The Application before me is the one dated 28th April 2014 by the Plaintiff seeking for the following orders:
 - a. That this Honourable Court be pleased to issue a temporary injunction restraining the 1st to 6th Defendants/Respondents whether by themselves and/or through their servants, agents, or any of them from registering, transferring, charging, dealing, interfering, or further subdividing the Plaintiff's properties i.e Title Number Kilifi/Madeteni/410 and Kilifi/Madeteni/414 (suit properties herein) pending the hearing and determination of the main suit.
 - b. THAT the 2nd Defendant/Respondent and/or other officers responsible for subdivision of land be compelled to cancel all previous subdivision, amend the Registry Index map and redraw the same to reflect existence of the Plaintiff's properties; Kilifi/Madeteni/410 and Kilifi/Madeteni/414 both located in Kilifi County as opposed to the illegal sub-division on the suit properties.

- c. **THAT pending hearing and determination of this suit, the Court issues a mandatory injunction directing the 4th Defendant/Respondent to produce for the inspection of the court and the parties herein the decision giving consent to subdivide the suit properties herein whose user is agricultural together with the minutes of the Board concerning the same transaction.**
- d. **THAT thereafter this Honourable Court declare the same invalid as well as null and void ab initio as the unconsented acts herein amount to illegal subdivisions.**
- e. **THAT costs occasioned by this Application be awarded to the Plaintiff/Applicant.**
- f. **THAT such other or further orders as may be just be made to meet the ends of justice and to safeguard and protect the Plaintiff/Applicant's right and the dignity of this Honourable Court.**

The Plaintiff's/Applicants' Case

2. The Plaintiff's/Applicant's Director has deponed that the Plaintiff is the registered proprietor of land known as Kilifi/Madeteni/410 and Kilifi/Madeteni/414 (the suit properties) which are reflected in the Registry Index Map as 410 and 414.
3. It is the Plaintiff's Director's deposition that in the year 2013, he learnt of the illegal and irregular sub-division of the suit properties into three (3) portions. Kilifi Madeteni was divided into Nos 727, 728 and 729 whereas Kilifi/Madeteni/414 was divided into number 739, 740 and 741.
4. According to the Plaintiff's Director, the said sub-divisions were reflected on the Registered Index Map; that the Plaintiff has never at any one point been consulted, notified or informed of the sub-division of its land and that the subdivisions were done without the Plaintiff's consent.
5. It is the Plaintiff's prayer that the said subdivisions should be cancelled by this court.

The Respondents' case:

6. The Chief Planning Officer of the 3rd Defendant/Respondent deponed that if the suit properties were subdivided as alleged by the Plaintiff, then the 3rd Respondent was not involved in the said subdivisions and the said subdivisions are in breach of the provisions of the Physical Planning Act; that the 3rd Defendant was not involved in the preparation of the sub-division scheme over the suit properties and that the Council has neither the mandate nor the competence to survey or re-survey the suit properties.
7. The Attorney General filed a Defence on 26th August 2014. However, the Attorney General neither filed a Replying Affidavit nor Grounds of Opposition.
8. The Plaintiff and the 3rd Defendant's Advocate filed their respective submissions and reiterated their clients' cases. I have considered the said submissions.

Analysis and findings:

9. The Defendants have not disputed that the Plaintiffs are the registered proprietors of the suit properties. Indeed, the 3rd Defendant's representative has stated that the 3rd Defendant is not aware of the sub-division of the suit properties.
10. The Attorney General did not file a Replying Affidavit. A perusal of the Defence filed by the Attorney General shows that he is not aware of any subdivisions of the suit property as alleged by the Plaintiff.
11. The only evidence in the possession of the Plaintiff to show that the two suit properties were subdivided to create plots number 727, 728, 729, 739, 740 and 741 is the Registered Index Map which has been annexed on the Supporting Affidavit.
12. The said annexed Registered Index Map marked as "MV5" is not clear at all. This court is unable to make a finding as to when the said subdivisions were made and whether the subdivision was approved and authenticated by the Director Surveys as required by the law. A clearer Registered Index Map certified by the Director of Surveys as a true copy should have been annexed on the Application.
13. There is also no evidence before this court that the alleged subdivisions have been registered and

titles issue. However, in view of the fact that the Defendants have not contested that the Plaintiffs are the registered owners of the suit properties, an injunction to prohibit any further dealings in the two suit properties should issue.

14. I shall however not grant to the Applicant the order of mandatory injunction at this stage in view of the denial by the 3rd Defendant and the Attorney General that the suit properties have been subdivided. Such an order, in my view, might be in vain.

15. I shall also not order the 4th Defendant to produce for inspection of the court the minutes of the Board for the same reasons that I have given above.

16. In the circumstances, I allow the Plaintiff's Application dated 28th April 2014 in terms of prayer number 2 alone with no orders as to costs.

Dated and delivered in Malindi this 26th day of September, 2014.

O. A. Angote

Judge