



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 224 OF 2013

KAVUMBI KITSAO CHENGO.....1ST PLAINTIFF

THABU KITSAO KAZUNGU.....2ND PLAINTIFF

=VERSUS=

SAMUEL CHARO MWENI.....1ST DEFENDANT

CHARO NYULE MRAMBA.....2ND DEFENDANT

KALUME NYULE MRAMBA.....3RD DEFENDANT

HON. ATTORNEY GENERAL.....4TH DEFENDANT

R U L I N G

Introduction:

1. The Application by the Plaintiff is dated 21st November 2013. In the Application, the Plaintiffs are seeking for the following reliefs:

(a) That the Respondents either by themselves and/or by their employees and/or their agents be restrained by an injunction order from interfering, subdividing, disposing off, transferring, alienating, charging or selling and or in any other manner dealing with the property known as KALOLENI/CHALANI/III pending the hearing and determination of the suit herein.

(b) THAT costs be in the cause

The Applicant's case:

2. According to the Plaintiff's Affidavit, the late Baya Mgwana is the registered proprietor of the suit property; that the Respondents are trying to disinherit them and that they have had their matrimonial home on the suit property for over 35 years.
3. The 1st Plaintiff has deponed that the Respondents secretly and maliciously filed a land dispute before the then land District Tribunal being case no. LND/KAL/20/2008 against the late Benson Kahindi Baya who was the son of the late Baya Mgwana and obtained ex parte orders.
4. The said Benson Kahindi filed an appeal against the decision of the Tribunal with the Provincial Land Appeals Committee being Land Appeal Number 11 of 2010 and that while appeal was pending, the 1st Respondent's father had the award in the Tribunal adopted by the Magistrate in Kaloleni.
5. However, it was deponed, the Provincial Land Appeals Committee has since been disbanded and that the 1st Respondent has offered for sale the suit property.

The Respondent's case:

6. The 1st Respondent swore an affidavit and deponed that he did not disinherit the Plaintiffs since they sold their interest in the suit property; that they have not sold any part of the land and that it is the Plaintiffs who have sold the land belonging to the Defendants to third parties.
7. The parties filed their respective submissions which I have considered.

Analysis and findings:

8. I deliberated at length on the issues raised in this matter in my ruling of December 2012 in Malindi HCCC No. 56 of 2012
9. In the said suit, the Plaintiff was Karisa Madembo Mweni while the Defendants were the current Plaintiffs. The subject property was the same.
10. In HCCC NO. 56 of 2012, the 1st Defendant herein claimed that Karisa Madumbo Mweni was the owner of the suit property and sought to bar the Defendants (now the Plaintiffs) from burying the body of Benson Kahindi Baya on the suit property.
11. After analysing the decision of the Tribunal, I held that the Plaintiff, not the 1st Defendant, had not established a prima facie case. I dismissed the Application for injunction orders and allowed the Defendants (now the Plaintiffs) to bury the late Benson Kahindi on the land.
12. The reasons as to why I allowed the current Plaintiffs to bury Benson Kahindi on the suit property and why I thought the current Defendants had not established a prima facie case with chances of success have not changed.
13. In that case, I held that it is the Plaintiffs who had always lived on the suit property and not the Defendants herein.
14. For the same reasons I gave in my Ruling of 10th December 2012, I allow the Plaintiff's Application dated 21st November 2013 as prayed.

Dated and delivered in Malindi this 31st day of October, 2014.

O. A. Angote

Judge