



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 232 OF 2013

JOHNSON KAZUNGU NYAU.....PLAINTIFF/RESPONDENT

=VERSUS=

MALINDI MUSKETEERS LTD.....1ST DEFENDANT/APPLICANT

DIRECTOR FO LAND ADJUDICATION

AND SETTLEMENT.....2ND DEFENDANT

THE COUNTY LAND REGISTRAR KILIFI.....3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....4TH DEFENDANT

RULING

Introduction:

1. What is before me is the Application by the 1st Defendant dated 15th July, 2014 seeking to strike out the Plaintiff's suit for being an abuse of the court process.

The 1st Defendant's/Applicant's case:

2. According to the affidavit by the 1st Defendant's director, the 1st Defendant is a bona fide purchaser for value without any notice of defect in the title of land known as Chembe/Kibabamshe/362 having purchased it from Daniel Ricci in June 2002.
3. The 1st Defendant's director has further averred that being a holder of a valid title document, the 1st Defendant is entitled to rely on the indefeasibility of title conferred by statute to protect its right to property; that the Plaintiff has never been registered as the owner of the suit property and that vide a Ruling dated 31st October 2013 in Malindi ELC No. 42 of 2011, this court dismissed a similar suit filed by the Plaintiff.

The Plaintiff's/Respondent's case:

4. In his Replying Affidavit, the Plaintiff/Respondent deponed that his suit is about fraud; that the current suit does not have the defects that his previous suit had and that the suit is based on the fact that his father was the actual owner of Chembe/Kibabamshe 362 having been identified as a

squatter.

Submissions:

5. The 1st Defendant's/Applicant's counsel submitted that the suit property herein does not form part of the Estate of Nyau Wanje Walungo as decreed in Malindi Succession Cause Number 21 of 2011; that this court dismissed a similar suit in Malindi HCCC No. 42 of 2012 and that the Plaintiff/Respondent has absolutely no interest in the suit property.
6. The Plaintiff/Respondent's advocate did not file any submissions

Analysis and findings:

7. The Plaintiff filed this suit alleging that at all material times, the late Nyau Wanje Walungo was the beneficial and real owner of land known as Chembe/Kibabamshe/362 and that he is the legal administrator of the Estate of the said Nyau Wanje Walungo having been issued with the certificate of confirmation of grant.
8. The Plaintiff is seeking for a declaration that the registration of the suit property in the name of Taiwa Agencies which transferred the same to Daniel Ricci and then to the 1st Defendant is null and void.
9. The Plaintiff has not denied that he filed a suit against the Defendants in Malindi HCCC NO. 42 of 2012 in respect to the suit property.
10. In that suit, the Plaintiff averred that he is the owner of the suit property having obtained a grant in respect to his father's estate.
11. The grounds that the Plaintiff relied on in HCCC NO. 42 of 2012 are the same grounds that he is relying on in this particular suit. In Malindi HCCC NO. 42 of 2012, I held as follows:

“When a claimant moves the court on the basis that he is entitled to be declared as an owner of a property, he must show in his pleadings how that proprietary interest arises. The Plaintiff has not done so in his Plaintiff and Replying Affidavit.

Although a claim which can be revived by an amendment should always be sustained, the court cannot entertain claims that have no basis in law. Such claims are a waste of judicial time and should be dismissed *in limine*.

A party who wants his proprietary rights protected by the court must show those rights and how they arose in his pleadings. Considering that the Plaintiff has not shown his proprietary interest in the suit property in his Plaintiff, I find that the Plaintiff is an abuse of the court process. The suit, as currently framed, is only meant to harass, irritate and annoy the Defendant/Applicant and interfere with the administration of justice. The suit has no basis at all.”

12. Nothing has changed since then for me to depart from my Judgment in the above matter. In any event, the Plaintiff cannot claim that his late father, Nyau Wanje Walungo is the beneficial or real owner of the suit property in view of the Judgment of the Court in **Malindi Succession Cause Number 21 of 2011, the Estate of Nyau Wanje Walungo**, in which a partial revocation of the grant issued to the Plaintiff was allowed in the following terms:

“Applying my mind to the purport of the Application itself and the material placed before me, I am persuaded that while it may be unnecessary or even unfair to revoke the Petitioner's grant in its entirety, the alternative prayer for a partial revocation in respect of Chembe/Kibabamshe/362 must be allowed. The confirmed grant issued on 21st May, 2013 will accordingly be rectified/amended to exclude plot number Chembe/Kibabamshe/362.”

13. The Judgment of this court in Malindi HCCC No. 42 of 2012 and Succession Cause No. 21 of 2011 clearly shows that the Plaintiff herein does not disclose any cause of action as against the Defendants and the suit is an abuse of the court process.

14. In the circumstances, I allow the Defendants' Application dated 15th July 2014 in the following terms:

(a) The Plaintiff's suit be and is hereby struck out with costs.

(b) The Plaintiff to pay the costs of this Application

Dated and delivered in Malindi this 21st day of November, 2014.

O. A. Angote

Judge