



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
CIVIL CASE NO. 58 OF 2013

RODGERS MUNDU MUNGA.....PLAINTIFF/APPLICANT

=VERSUS=

1. PATRICK CHISHENGA

2. EDISON KASHINDO MUNGA

3. BENSON RUNYA MUNGA.....DEFENDANTS/RESPONDENTS

RULING

1. What is before me is the Plaintiff's Application dated 2nd April 2013 and filed on 8th April 2013 seeking for the following reliefs;
 - a. *THAT this Honourable Court be pleased to issue an injunction order restraining the Defendants, their families from further building and constructing new houses, cultivating, planting, using alienating and or in any manner interfering with the Plaintiff's parcel of land Kilifi/Roka/1083 pending the inter parties hearing and determination of this suit.*
 - b. *Costs of the Application.*
2. The Application is supported by the Affidavit of the Applicant in which he has deponed that he is the registered owner of land parcel number Kilifi/Roka/1083.
3. According to the Applicant, the Defendants were allocated 2 acres each by their father in Kadzinuni village within Vipingo area.
4. The Applicant acknowledged that he was sued by his father at the Bahari Land Dispute Tribunal and the decision of the Tribunal was adopted as a Judgment of the court in Kilifi Senior Resident Magistrate land case number 7 of 2006. The Tribunal dismissed the Applicant's father's claim.
5. The subsequent appeal by the Applicant's father at the Provincial Land Dispute Committee at Mombasa was also dismissed.
6. After the Appeal, the Applicant has deponed that he issued to the Defendants a six months' notice to vacate his parcel of land which they ignored; that the 2nd defendant is illegally and unlawfully building a permanent house on the suit property.
7. Patrick Chishenga, the 1st Respondent, filed his Replying Affidavit on 22nd April 2013 and deponed that he is the elder brother of the other two defendants. He denied that he followed his

- father from Kadzinuni village to Matsangoni where the suit property is situated and that him together with his brothers are the ones who planted cashew nut trees, coconut trees, lemon trees and the mango trees on the suit property.
8. The 1st Respondent finally deponed that they are not aware of the 2 acres at Kadzinuni which has been allocated to them as claimed by the Applicant and that they have stayed on the suit property since 1969 to date.
 9. The grounds for granting an interim injunction are well settled. The Applicant must show that he has a prima facie case with chances of success and that unless the injunction is issued, he is likely to suffer irreparable damage. If in doubt about the two, the court is supposed to decide the Application on a balance of convenience.
 10. The Applicant has annexed on his supporting affidavit a title deed in his name for the parcel of land number Kilifi/Roka/1083 issued on 29th August, 2006.
 11. The Applicant has also annexed the decision of the Bahari Land Dispute Tribunal, which, after hearing the Applicant's father, the Applicant and the witnesses and visiting the suit property decided the dispute in favour of the Applicant. The tribunal's decision was adopted by the Kilifi Senior Resident Magistrate in SRMCC No. 7 of 2006.
 12. The Applicant's father filed an appeal against the decision of the Tribunal with the Provincial Land Appeal Committee-Coast in Appeal case number 424 of 2006.
 13. The Appeal's committee heard the parties and witnesses and visited the suit property. The Appeal was decided on 13th July, 2011 in favour of the Applicant herein. The Respondents father was advised to file an appeal in the High court if he was not satisfied with the decision of the Appeals committee. He never filed the Appeal.
 14. The Respondents have not shown that the suit property was their ancestral land. They have not shown that the Applicant is holding the title document in trust for the rest of the family.
 15. The Bahari Land Disputes Tribunal and the Coast Provincial Land Appeals Committee found as a fact that the land in question belonged to the Applicant and not the Applicant's father. I do not see any reason as to why I should interfere with that finding of the two tribunals when there is no appeal against the said decision before me.
 16. Consequently, and for the reasons I have given above, I find and hold that the Plaintiff has established a prima facie case with chances of success. The Applicant will also suffer irreparable damage if the Respondents are allowed to deal with the suit property in any manner they deem fit.
 17. I therefore allow the Application dated 2nd April 2013 as drawn.

Dated and delivered in Malindi this 11th day of July, 2013.

O. A. ANGOTE

JUDGE