



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
MISCELLANEOUS CIVIL APP. NO. 3 OF 2013

IN THE MATTER OF: AN APPLICATION FOR VESTING ORDERS B
PETER KAMAU MWAURA IN LAND REF:

GONGONI SETTLEMENT SCHEME/1989

MEASURING APPROX. 2.54 HA

AND

IN THE MATTER OF: AN APPLICATION BY PETER KAMAU MWAURA
FOR ORDERS FOR VACANT POSSESSION OF
THE LAND KNOWN AS GONGONI SETTLEMENT
SCHEME/1989 AND EVICTION ORDERS AGAINST
WILLIAM MWASARU MGENDI AND CHRISTINE

WILLIAM

AND

IN THE MATTER OF: THE LAND REGISTRATION ACT NO. 3 OF 2012
AND THE LAND ENVIRONMENT ACT NO. 26 OF

2012

PETER KAMAU MWAURA.....APPLICANT

VERSUS

CHRISTINE WILLIAM MWASARU.....1ST RESPONDENT

WILLIAM MWASARU MGENDI.....2ND RESPONDENT

R U L I N G

1. Before me is the Plaintiff's Application dated 16th April 2013 brought pursuant to the judgment of the Magarini Land Disputes Tribunal case number 13/7 of 2009
2. The Application seeks for the following reliefs.
 - a. **THAT the Honourable Land Court be please to issue vesting orders in favour of the applicant vesting all rights, interest and privileges including registration of all that land known as Gongoni settlement scheme No. 1989 measuring approx. 2.5 Ha now registered in the name of the 2nd Respondent at Kilifi Land Registry and the Deputy Registrar of the Land court be allowed to sign and execute transfer forms for the land in favour of the Applicant for the subsequent registration of the Applicant as the registered owner thereof by the land registrar at Kilifi Land Registry.**
 - b. **THAT the Honourable Court be pleased to issue eviction orders against the respondents or their agents and/or representatives of any one acting on their behalf and warrants for vacant possession be issued to the court bailiff to deliver vacant possession of the land known as Gongoni Settlement Scheme to the Applicant.**
 - c. **The OCPD Malindi Police Division and the OCS Malindi Police station be empowered to enforce the execution of orders No. 2 above.**
3. According to the Applicant, he was adjudged the rightful owner of the land in dispute by the Judgment of Magarini Land Disputes Tribunal in case number 13/7 of 2009, that no appeal was filed against the judgment and that the tribunal judgment was final and ought to be executed in favour of the Applicant.
4. The Applicant further states that the Tribunal's award was adopted as a judgment of the court: that the 1st Respondent fraudulently caused the 2nd Respondent to be registered as the owner of the suit property on an attempt to defeat the judgment that was entered in favour of the Applicant.
5. The Respondents filed their Grounds of Opposition on 3rd May 2013 and stated that the registered owner of the subject land against whom the orders are sought was not a party in the Tribunal case and that there is a pending appeal in the Provincial Land Dispute Tribunal filed as number 41 of 2010 at Mombasa against the decision of the subject District Land Dispute Tribunal case which appeal is yet to be determined.
6. The Respondents finally stated that the Applicant's Application is not enabled by law; that it is an utter abuse of the process of the court.
7. The parties made their oral submissions on 24th July 2013 which I have considered.
8. I have perused the award of the Magarini Land Dispute Tribunal in land dispute case number 13/17 of 1990 between the Applicant herein and the 1st Respondent.
9. The Tribunal's award was in favour of the Applicant and the same was adopted by Chief Magistrate as an award of the court in Land Case Number 155 of 2010.
10. I have also perused the Memorandum of Appeal that was filed in the Provincial Land dispute Appeals Committee, Mombasa by the 1st Respondent in respect to the award of the Magarini Land Dispute Tribunal.
11. That Appeal has not been heard. In my view all the appeals in respect to the decisions of the Land Disputes Tribunal that are pending before the Provincial Land Dispute Appeals Committee should be forwarded to the Environment and Land Court for hearing and disposal.
12. In view of the pending appeal, and in view of the fact that the suit property has since been registered in the name of the 2nd Respondent, I find that this court cannot determine the legality or otherwise of the title by way of an Application.
13. The Applicant will have to transfer the pending appeal to this court or move this court by way of a substantive suit. In the circumstances, I dismiss the Applicant's Notice of Motion dated 16th April 2013.
14. Each party shall bear their own costs.

Dated and Delivered in Malindi this 27th day of **September**, 2013.

O. A. Angote

Judge