



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 47 OF 2013

HABIB ABU MOHAMED.....PLAINTIFF

=VERSUS=

STEPHEN OLUOCH.....DEFENDANT

RULING

Introduction

1. The Plaintiff moved this court by way of a Plaint on 27th March 2013.
2. In the Plaint, the Plaintiff claims that he is the lawful registered owner of Land Reference Number 12240, Malindi having purchased it from one Nurali Popat Hasham and Zarina Nurali Hasham vide an indenture dated 16th March 2010.

The Application

3. The Application currently before the court is the one dated 26th March 2013 and filed on 27th March 2013. In the Application, the Plaintiff is seeking for the following reliefs:
 - a. **THAT pending the hearing and determination of this suit, a temporary injunction do issue restraining the Defendant, his servants, agents and/or any person acting under the Defendant's authority from trespassing, encroaching, sub-dividing, selling off, building on, constructing upon, alienating, damaging, wasting, disposing off, and or in any manner whatsoever continuing carrying out any activities or at all over the suit property to wit all that property referenced Title Number Plot No. L.R. No.12240.**
 - b. **THAT the costs of this application be in the cause**
4. The Application is supported by the affidavit of the Plaintiff whose main deposition is that upon purchase of L.R. 12240 (the suit property), the Defendant forcibly fenced it off and started developing it.

The Response

5. The Defendant filed his Replying Affidavit on 12th June 2013 in response to the Plaintiff's Application.
6. The Defendant deponed that on 11th December 2006, he entered into an agreement with Nurali Popat Hasham and Zarina Nurali, now deceased, for the purchase of a portion of land within the

- un subdivided portion number 244 measuring 154.38 acres; that the portion he bought measured 0.3 hectares.
7. It is the Defendant's deposition that he was one of the first persons to purchase the land and he built a grass thatched house on it and in the year 2011, he put up a permanent house which is occupied by his servant Ali Charo.
 8. The Defendant finally deponed that the land represented in the Plaintiff's deed plan is occupied by other people including a church; that the Plaintiff has not annexed a Sale Agreement and that he is on the suit property by right as a purchaser for value from the registered owners.

Analysis

9. The Plaintiff annexed on his supporting Affidavit the Indenture made on 16th March 2010 between himself and the two vendors.
10. The Indenture shows that the land is represented in a certificate of ownership number 570 and issued by the recorder of titles on 18th October 1915 and registered in the Mombasa registry in Volume LT.XII folio 14 and numbered 244 measured 154.38 acres or thereabout. The land was divided into portions, one of the portions being 12240 measuring 2.040 hectares (approximately 5 acres.)
11. The Indenture shows that the Plaintiff paid the vendor Kshs.800,000 and the suit property was duly registered in his favour on 19th March 2010.
12. The Defendant annexed a copy of the Sale Agreement dated 11th December 2006 showing that he had purchased 1/8 of the land portion number 244 Malindi from the same vendors who sold the land to the Plaintiff. The Defendant did not annex any other conveyance instrument in respect to the suit property.
13. The Defendant also annexed a schedule of the portion that the vendors sold to different people. In the said schedule, it is indicated that the Plaintiff purchased 5 acres while the Defendant purchased 0.3 acres from the said vendors.
14. It is therefore not in dispute that both the Plaintiff and the Defendant purchased their respective portions of land from the same vendors.
15. The Plaintiff's portion measuring 2.040 Ha is surveyed and delineated in the deed plan that was annexed on the Indenture registered of 19th March 2010. The said portion is therefore identifiable unlike the Defendant's portion.
16. In view of the said indenture and deed plan, and in the absence at this stage to show that the documents held by the Plaintiff are forgeries, I find that the Plaintiff has established a prima facie case with chances of success. The Plaintiff is likely to suffer damages that the Defendant will not be able to compensate him by way of damages unless the injunctive orders are issued.
17. For the above reasons, I allow the Plaintiff's Application dated 26th March 2013 as prayed.

Dated and Delivered in Malindi this 25th day of **October**, 2013

O. A. Angote

Judge