



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE NO. 128 OF 2012**

**ANTONIO DI GREGORIO.....PLAINTIFF**

**=VERSUS=**

**THE TOWN COUNCIL OF KILIFI.....DEFENDANT**

**RULING**

**Introduction**

1. The Plaintiff commenced this suit by way of a Plaint dated 9<sup>th</sup> August 2012 seeking for an injunction restraining the Defendant from interfering with L.R. 17835/6 Kilifi Bofa. Contemporaneously with the Plaint, the Plaintiff filed the Application before me seeking for the following orders.
  - i. **THAT a temporary injunction do issue restraining the Defendant/Respondent by itself, its agents, servants, employees and/or any other persons acting under it from interfering with, selling, disposing off, dealing with, removing and/or repossessing the property known as L.R. 17835/6 KILIFI NORTH, BOFA within Kilifi County until this case is heard and determined.**
  - ii. **THAT the Defendant/Respondent be ordered to accept payment of rates on the property namely, L.R. 17835/6 KILIFI NORTH, BOFA within the Kilifi County without any interest on the outstanding amount due to the Council as rates.**
  - iii. **THAT this Honourable court do allow the Defendant/Respondent to deposit the said amount in court awaiting the determination of this suit.**
  - iv. **THAT the costs of this Application be provided.**
2. According to the Plaintiff's deposition, he bought the suit property in the year 2004 vide an agreement of sale dated 18<sup>th</sup> February 2004; that the suit property is registered in his name and that the Respondent has declined to receive payments in respect to the rates which are due and owing.
3. The Defendant filed its Grounds of Opposition and a Replying Affidavit on 26<sup>th</sup> September 2012.
4. According to the deposition of the then Town Clerk of the Defendant, the Defendant admitted that it has not been receiving rates payment for the suit property because the mother title deed to the suit property has been in dispute since the year 2009 and that the same has been the subject of investigations by the Kenya Anti-Corruption Commission; that the suit property has two title deeds and that several people have been presenting documents in respect to ownership of the same property to the Council.

5. It is the Defendant's deposition that there are several suits in respect to the suit property, to wit, Mombasa High Court Civil Suit NO. 226 of 2009, Malindi HCCC NO. 66 of 2009 and Mombasa High Court Petition NO. 24 of 2011. It is because of the said disputes in respect to the suit property that the Defendant could not receive any rates payment in respect to the suit property.
6. The parties filed written submissions which I have considered.

### **Analysis and findings**

7. The Plaintiff has not disputed the existence of suits both in this court and in Mombasa relating to the suit property. It would appear that the issue of ownership of the property between the Plaintiff and other claimants who are not parties to this suit has not been determined by the court or the Defendant. In the circumstances, it is the Defendant's position that it cannot receive the rates in respect to the suit property from the Plaintiff.
8. I agreed with the Defendant that until the issue of ownership of the suit property is determined, it will not be prudent for it to receive the rates from the Plaintiff or from the other claimants.
9. In view of the existence of numerous suits and claimants, I am not in a position to determine whether or not the Plaintiff case has a *prima facie* case with chances of success. In my view, this matter together with Mombasa HCCC No. 226 of 2009, Malindi HCCC No 66 of 2009 and Mombasa High Court Petition No. 24 of 2011 should be placed before one Judge for hearing and disposal.
10. For the purpose of maintaining the *status quo* pending the hearing and disposal of this matter together with the matters I have mentioned in the preceding paragraph, I shall, which I hereby do, allow the Plaintiff's Application in terms of Prayer number 2.
11. Each party shall bear his/its own costs.

Dated and Delivered in Malindi this **8<sup>th</sup>** day of **November**, 2013

**O. A. Angote**

**Judge**