



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

LAND CASE NO. 141OF 2013

AHMED OBO.....PLAINTIFF

=VERSUS=

KENYA AIRPORT AUTHORITY.....DEFENDANT

RULING

Introduction

1. What is before me is the Plaintiff's Application dated 13th August 2013 brought pursuant to the provisions of Order 40 of the Civil Procedure Rules, 2010.
2. In the Application, the Plaintiff is seeking for injunctive orders to issue restraining the Defendant from trespassing into or interfering with the user and quiet possession of Plot "A" Manda pending the hearing and determination of the suit.

Plaintiff's

3. The Application is supported by the Affidavit of the Plaintiff who has deponed that he is the registered owner of L.R. No. Plot "A" Manda and that he has been in continuous, peaceful occupation of the land for more than 15 years and that he has built a home on the land.
4. The Applicant has further deponed that in the year 2012, the Respondent started interfering with the user and his quiet possession of the land by alleging that he was constructing a building on its land; that the Defendant further attempted to fence off part of his land claiming that it is the owner of the land and that the Defendant is claiming that the suit property ought to be part of the Manda Island Airstrip which is not the case.
5. The Plaintiff is apprehensive that he might lose his land without due process being followed and yet he was legally allocated the land.

The Defendant's case

6. The Defendant filed its Grounds of Opposition on 9th September 2013 and stated that the Application is misconceived, bad in law and an abuse of the process of the court; that the Plaintiff does not have a justifiable cause of action against the Defendant and that the letter of allotment dated 24th September 1998 is not proof of ownership.
7. The parties appeared before me on 25th September 2013 and made oral submissions which I have considered.

Analysis

8. To prove his claim, the Plaintiff has annexed on his Supporting Affidavit a letter of allotment dated 24th September 1998 which was issued to him by the Commissioner of Lands.
9. According to the said letter of allotment, the Government offered the Plaintiff land measuring 13.6 Ha for a term of 99 years with effect from 1st October 1998. The Plaintiff was to accept the offer in writing and pay the requisite fees amounting to Kshs.225, 549.
10. The Plaintiff has also annexed a letter of allotment dated 19th January 2000 which was issued to the Defendant in respect of the land on the Island measuring 144.5 Hectares. However, it would appear that the Defendant was issued with a Grant by the Government on the Island for a land known as Portion number 21 measuring 194.Ha and not the 144.5Ha indicated in the letter of allotment.
11. The Defendant consequently wrote letters to the Plaintiff requiring him to stop putting up buildings on what the Defendant considered its land. It would appear, from the correspondences annexed on the Plaintiff's affidavit that in addition to portion number 21 which legally belongs to the Defendant, the Defendant was desirous of expanding Manda Airstrip. However, the expansion was being hampered by individuals, including the Plaintiff, who had settled on the Island.
12. From the Plaintiff's documents, the whole of Manda Island seems to be Government Land and not Trust Land. Indeed, according to the Minutes of the County Council of Lamu full council meeting held on 20th April 2005, the council resolved that the Government should be requested to gazette the remaining Government Land in Lamu District as Trust Land.
13. The Plaintiff has not stated if he met the conditions in the letter of allotment dated 24th September, 1998 which was an offer by the Government for land measuring 13.64 Ha. In the absence of evidence by the Plaintiff that he accepted the offer by paying the amount of money stipulated in the letter of offer, the Plaintiff cannot claim to have any proprietary rights over Plot "A" Manda that can be protected by the Constitution. The Constitution only protects existing rights.
14. The Defendant has also not shown that it can acquire Government land without applying for it and the same being allocated to it as per the law. However, in the instant case, it is upon the Plaintiff, and not the Defendant, to show that he has a prima facie case with chances of success for him to be granted an order of injunction by this court. He has failed to do that.
15. The ultimate organization that can determine whether the disputed piece of land which is Government land should be allocated to the Plaintiff or the Defendant is the National Land Commission as provided for under Article 62(2) of the Constitution and Section 5(2) (a) of the National Land Commission Act, 2012.
16. I say so because as long as the Plaintiff does show by way of evidence that he accepted the offer of 24th September 1998, the said property remains un alienated Government land and therefore public land as defined in Article 62(1) (a) of the Constitution.
17. For the above reasons, I dismiss the Plaintiff's Application dated 13th August, 2013 with costs.

Dated and Delivered in Malindi this 1st day of **November**, 2013

O. A. Angote

Judge