



Raymond & another (Suing as the administrators for and on behalf of the Estate Raymond Charo Baluna - Deceased) v Attorney General & 3 others (Environment & Land Case 46 of 2023) [2024] KEELC 4374 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4374 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 46 OF 2023**

**FM NJOROGE, J
MAY 30, 2024**

BETWEEN

**JULIUS CHARO RAYMOND 1ST PLAINTIFF
CHILANGO DICKSON CHARO 2ND PLAINTIFF
SUING AS THE ADMINISTRATORS FOR AND ON BEHALF OF THE ESTATE
RAYMOND CHARO BALUNA - DECEASED**

AND

**THE HON ATTORNEY GENERAL 1ST DEFENDANT
THE DIRECTOR OF LAND ADJUDICATION 2ND DEFENDANT
LAMU COUNTY LAND REGISTRAR 3RD DEFENDANT
ABDULREHMAN ALAMIN 4TH DEFENDANT**

RULING

1. For determination is the Plaintiffs’ Notice of Motion dated 20th June 2023 brought under Section 1A, 1B & 3A of the Civil Procedure Act, Order 40 Rules (1) and (2), Order 51 Rule 1 seeking the following orders:
 - a. Spent;
 - b. Spent;
 - c. That pending the hearing and determination of this suit an injunction do issue against the 4th Defendant restraining him whether by himself, his servants and/or agents from entering, trespassing into, cultivating, developing, building, selling, disposing of and/or interfering in any way whatsoever with the possession and quiet enjoyment of the suit



property being portion measuring approximately 3 acres hived off Title No. Lamu/hindi/magogoni/317 (Original Plot No. 317 Hindi/magogoni, Hindi Magogoni Settlement Scheme) that abuts Title No: Lamu/hindi/magogoni/318 and/or is a part of Title No: Lamu/hindi/magogoni/1151, 1152, 1152 & 1153;

- d. That the officer in charge of the Police station Hindi, Mokowe (OCS Hindi Mokowe) be directed to enforce compliance with the court orders in respect of the suit property being a portion measuring approximately 3 acres hived off Title No. Lamu/hindi/magogoni/317 (Original Plot No. 317 Hindi/magogoni, Hindi Magogoni Settlement Scheme) that abuts Title No: Lamu/hindi/magogoni/318 and/or is a part of Title No: Lamu/hindi/magogoni/1151, 1152, 1152 & 1153;
 - e. That costs of this application be provided for.
2. The application is anchored on the grounds set out on its face and on the supporting affidavit of Chilango Dickson Charo, one of the Plaintiffs, who deponed that the Estate of the late Raymond Charo Baluna is the legal and beneficial owner of the suit property measuring approximately 10 acres vide a letter of allotment but now measures 7 acres. It was stated that the deceased was allotted 10 acres but upon finalizing documentation, 3 acres or thereof had been hived off and purportedly lined without formal survey as part of the adjacent land known as Title No: Lamu/Hindi Magogoni/318 owned by the 4th Defendant. It was also stated that attempts by the deceased to seek clarity on the anomaly were futile and that actions of the 2nd, 3rd and 4th defendants in respect of the hived off portion owned by the late Raymond Charo Baluna was unjustifiable and illegal.
 3. The 2nd Respondent filed a replying affidavit sworn by A.H Mohamed, the Land Adjudication & Settlement officer for the 2nd Respondent stating that according to the records at the County Land Adjudication and Settlement office, Lamu, a letter of offer was issued to Mr. Raymond Charo on 1st January 1998 for a 10-acre plot which was later revised to 7 acres since the portion developed by one Abdalla Abdulhakim was excluded; that Mr. Charo accepted the offer and executed the plot charge document on 19th April 1989. Later, he cleared the Settlement Fund Trustees Loan for the 7 acres and on 18th April 2012 the plot was discharged in Mr. Charo's favour. He deponed that an offer letter was issued to Mr. Abdul Hakim on 1st January 1988 as a 10-acre plot but was later revised to 13 acres following the dispute with Mr. Charo. Further, he executed the charge documents and paid the Settlement Fund Trustees Loan outright. Mr. Abdul Hakim transferred the land to Abdalla A. Skanda. He additionally stated that Mr. Charo was sued and charged at Lamu Magistrates court in 1993 and was found guilty and sentenced and fined. Lastly, in 1995, Mr. Skanda transferred the land to Universal Processors Limited.
 4. The 4th Defendant/Respondent filed a replying affidavit stating that he is the owner of the all that parcel of land known as Lamu/Hindi/Magogoni/318 measuring 5.3 hectares which was first purchased by a company known as Universal Processor Limited from one Abdalla A. Abdalla Skanda. He stated that title to that parcel was issued on 14th September 2012. He added that from the consent it can be confirmed that the parcel has been measuring 13 acres from the year 1995 and without prejudice if any hiving off was done the same was before the year 1995 a period more than the limitation period provided for filing a suit for recovery of land. It was his statement that Lamu/Hindi/Magogoni/318 has since been subdivided into 3 portions namely Lamu/Hindi/Magogoni/1151, Lamu/Hindi/Magogoni/1152, Lamu/Hindi/Magogoni/1153 and Lamu/Hindi/Magogoni/1154. Further, Lamu/Hindi/Magogoni/1151 and Lamu/Hindi/Magogoni 1152 have been sold to third parties while the other two portions he has fully developed and they are in his name.

DISPOSITION



5. The court has upon considering the replies to the motion formed the opinion that there may be truth in the allegations that some subdivisions of Lamu/Hindi/Magogoni/318 have been disposed of to persons not parties to these proceedings. The remaining portions are developed by the 4th defendant and are occupied by his tenants.
6. In the circumstances prevailing this court finds that the applicant has not established a prima facie case nor any risk of irreparable loss if the orders are not granted as prayed. This court can only resort to the balance of convenience in ruling on the present application so as to preserve what is left in the 4th defendant's name as orders issued to nonparties who own the other sub plots would result in injustice to them. Until and unless they are made parties this court can not issue orders against them.
7. I therefore do issue an order that the 4th defendant shall maintain the current status quo of the suit land comprising of plots numbers Lamu/Hindi/Magogoni/1153 and Lamu/Hindi/Magogoni/1154 and he shall not dispose of them at all until the hearing and determination of the present suit. Parties shall comply with the Civil Procedure Rules, the plaintiff within the first 30 days hereof and the defendants within the 30 days following the period granted to the plaintiff, and this matter shall be mentioned on 30th September 2024 for issuance of a hearing date for the main suit.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30TH DAY OF MAY 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

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Page 2 of 2

