



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC JR MISC APP. NO. 1 OF 2016

IN THE MATTER OF : THE LAND CAUSE NO. 6 OF 2006

- 1. KAZUNGU MWATETE**
2. KALUME BAYA.....EX PARTE APPLICANT

=VERSUS=

- 1. ROBERT MUREITHI GITHINJI**
2. THE LAND REGISTRA KILIFI.....RESPONDENTS

J U D G M E N T

1. In the Notice of Motion dated 26th February 2016, the Ex-Parte Applicants are seeking for the following reliefs:

(a) THAT the Honourable Court be pleased to grant an Order of Mandamus to compel the respondent to register the Applicants as the owners of the property known as KILIFI/JIMBA/42 previously subdivided into plot No. KILIFI/JIMBA 472, KILIFI/JIMBA 473 and KILIFI/JIMBA 474.

(b) THAT costs of this application be provided for.

2. The Motion is supported by the statutory statement and the Verifying Affidavit of the 1st Ex-Parte Applicant.

3. In the Affidavit, the 1st Ex-Parte Applicant has deposed that they own the suit properties; that they are in occupation of the land parcels of land and that during the adjudication process, the land was rightfully registered in their names although the titles were issued in the name of Robert Mureithi Githinji.

4. According to the 1st Ex-Parte Applicant, they filed proceedings in the land Disputes Tribunal; that the Tribunal found in their favour and that the Tribunal directed that the title deed that had been registered in favour of the Objector should be cancelled and the subsequent sub division be nullified.

5. Although the Magistrates' court adopted the findings of the Tribunal, the Ex parte Applicants have averred that the Land Registrar, Kilifi, has refused and neglected to comply with the order.

6. It is the Applicant's case that the failure of the Land Registrar, Kilifi, to comply with a lawful court order is unreasonable, irrational and an abuse of the discretion vested upon him.

7. The Respondent filed Grounds of Opposition in which it averred that the Land Dispute Tribunal did not have jurisdiction to deal with ownership of land; that the registered owner had not been enjoined in this suit and that there is no document to show that indeed the Land Register has refused to comply with the said order.

8. The advocates filed brief submissions in which they reiterated their clients' case.

9. It is true that in the year 2006, the Malindi Land Dispute Tribunal deliberated on the issue of ownership of land known as Kilifi/Jimba 42.

10. In their decision, the Tribunal found that the transfer of Kilifi/Jimba 42 from Kazungu Mwatete to Robert Mureithi Githinji was illegal and directed that the land should revert to the Applicants.

11. The Tribunal further directed that the claimants should move the High Court for cancellation of all titles arising from the objection's action.

12. From the above findings, the Tribunal was alive to the fact that it is only this court that can cancel the title that had been issued to the objector. In the circumstances, the Applicants can only succeed in the present claim after moving this court for cancellation of the impugned titles.

13. The fact that this court has not cancelled the impugned title deeds, and the failure by the Applicants to enjoin the registered proprietor of the suit property in these proceedings renders the suit incompetent.

14. For those reasons, I strike out the Notice of Motion dated 26th February, 2016 with no order as to costs.

Dated, signed and delivered in Malindi this 3rd day of **February**, 2017.

O. A. Angote

Judge



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