



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 110 OF 2017

OMAR MARO BARISA.....PLAINTIFF

VERSUS

MURAMBA BAKARI OMAR

HUSSEIN MORAWA.....DEFENDANTS

COUNTY GOVERNMENT OF TANA RIVER.....INTERESTED PARTY

RULING

1. By this Notice of Motion dated and filed herein on 8th October 2018, the County Government of Tana River seeks to be enjoined in these proceedings as an Interested Party. The application which is supported by an Affidavit sworn by its Director Legal Services Isaiah Ndisi Munje is premised on the grounds that:-

(a) The suit property is land communally owned by the residents of Tana River County;

(b) Under the Constitution of Kenya 2010, and the Community Land Act 2013, such land is vested with and in the Applicant to hold in trust, for the greater and wider interests of the community;

(c) The Applicant has visited the locus quo, understands the historical background of the dispute between the parties and has been arbitrating the dispute between the parties with a view of having an amicable settlement;

(d) In the process the Applicant has obtained relevant material that will assist this Court for the effective and just determination of the matter;

(e) The Applicant is by virtue of the foregoing and by virtue of the provisions of the Community Land Act and Article 63 of the Constitution a necessary Party for the effective and just determination of the issues before the Court; and

(f) It is in the interest of administration of justice that the prayers sought herein be granted.

2. The application is opposed. In a Replying Affidavit sworn and filed herein on 10th December 2018, the Plaintiff Omar Maro Barisa avers that the application is full of falsehoods. He asserts that the dispute herein relates to land that he owns privately and that it is not community or clan land as claimed.

3. The Plaintiff further avers that he came to Court due to the fact that the Defendants were trespassing on his parcel of land which land he had occupied for over 67 years. The Plaintiff further asserts that the Defendants are trying to use the County Government to enrich themselves with other people's land.

4. I have perused and considered the Application as well as the opposition thereto. Rule 10(2) of Order 1 of the Civil Procedure Rules provides as follows:-

“The Court may at any state of the proceedings, either upon or without the application of either Party, and on such terms as may appear to the Court to be just, order that the name of any Party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

5. The Applicant County Government prays to be enjoined in these proceedings as an Interested Party. Black's Law Dictionary 9th Edition, (Page 1232) defines an “Interested Party” as

“A party who has a recognisable stake (and therefore standing) in the matter.”

6. In *Trusted Society of Human Rights –vs- Mumo Matemu & 5 Others (2014) eKLR*, the Supreme Court reiterated this definition when it observed that:-

“...an Interested Party is one who has a stake in the proceedings though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions her cause.”

7. In the matter before me, the Applicant asserts that the land in dispute is community land and that by virtue of the Constitution and the Community Land Act, the said land is vested in itself to hold in trust for the greater and wider interests of the community. It is also the Applicant's case that it understands the historical background of the dispute and that it has been arbitrating the dispute between the parties.

8. The Plaintiff however disputes the contention that the dispute relates to community land and asserts that the land in question is privately owned by himself. He further denies that any official from the Applicant County Government has ever approached or met him for purposes of arbitrating the dispute.

9. As it were, no evidence whatsoever was placed before me to demonstrate that the land in dispute is community land as stated by the Applicant. Neither was there any documentary support for the position that there is a historical background to the dispute and/or that the Applicant has been engaging the parties in arbitration as was alleged.

10. In the circumstances of this case, I am not persuaded that the Applicant is a necessary or proper party and/or that it may be affected by the verdict in these proceedings.

11. The application dated 8th October 2018 is accordingly dismissed with costs to the Plaintiff.

Dated, signed and delivered at Malindi this 23rd day of January, 2020.

J.O. OLOLA

JUDGE



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