



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.55 OF 2015

SHADRACK CHARO CHOME.....PLAINTIFF

=VERUS=

1. DAMA CHARO BAYA

2. MARIAM SHEKUE.....DEFENDANTS

R U L I N G

1. What is before me is the Application by the Plaintiff dated 10th April, 2015 seeking for the following orders:-

(a) Pending the hearing and determination of this suit, an injunction do issue restraining the Defendants whether by themselves, their family members, servants, employees and/or agents or any other who may be claiming through them, from entering and undertaking any construction, demolishing a foundation thereon, or in any manner whatsoever interfering with the Plaintiff's portion of land which is part of Plot NO. 411R Malindi including positioning of thugs to unleash terror on the applicant.

(b) The costs of this application are awarded to the Plaintiff.

2. According to the Plaintiff's Affidavit, he entered into an agreement with the 1st Respondent for the purchase of land measuring 50 X 30 feet being a portion of plot number 411 R Malindi; that he paid Kshs.140,000 in the presence of "Kilio cha Maskini Committee", a Committee that is responsible for all transactions relating to title and that the 1st Defendant's name was removed from the roll and replaced with hers.

3. The Plaintiff deponed that the 2nd Respondent is constructing on the suit land and that he should be stopped from any further construction.

4. The 2nd Defendant's Attorney deponed that the 2nd Defendant entered into a sale agreement with the 1st Defendant on 21st December, 2004; that the 2nd Defendant took possession of the land immediately and put up a foundation and that she has never received any letter from Kilio cha Maskini Committee and the District Officer as alleged by the Plaintiff.

5. According to the 2nd Defendant, her agreement preceded the Plaintiff's and that she is the one entitled to the property because she has put up a foundation.

6. The Plaintiff and the 2nd Defendant's Advocates filed written submissions which I have considered.
7. From the Plaintiff's and the 2nd Defendant's affidavits, it would appear that they both bought the suit property from the 1st Defendant.
8. In view of the fact that the 1st Defendant has not filed an Affidavit, the court is unable to find at this stage who between the Plaintiff and the 2nd Defendant is entitled to the suit.
9. Considering that the court can only determine the issues herein after viva voce evidence, the most appropriate order to make at this stage is to preserve the suit property as it is, pending interpartes hearing.
10. In the circumstances, I make the following orders:-

(a) Neither the Plaintiff nor the Defendant or their agents or servants should enter, construct or in any manner whatsoever interfere with the suit property which is part of Plot NO. 411R Malindi pending the hearing and determination of the suit.

(b) Each party to bear his own costs.

Dated, signed and delivered in Malindi this 22nd day of **September**, 2016.

O. A. Angote

Judge