



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
ENVIRONMENT AND LAND COURT
CIVIL CASE NO. 70 OF 2013

JOSEPH GICHOYA MBOGO.....PLAINTIFF

=VERSUS=

MALINDI MUNICIPAL COUNCIL.....DEFENDANT

RULING

1. What is before me is the Plaintiff's Application dated 26th April 2013 seeking for the following orders.
 - a. **That pending hearing and determination of this suit, an order of injunction do issue restraining the respondent, its agents, servants, employees and any others claiming through it from any further demolition or damage to the portion of the suit property belonging to the applicant.**
 - b. **That the applicant be awarded the costs of this application.**

2. The Application is supported by the Affidavit of the Plaintiff. In the said Affidavit, the Plaintiff has deponed that he is the beneficial owner of a portion of land measuring 26 X 35 meters which is part of plot number 958 (original number 50/2) Watamu and that he has been in exclusive possession of the same for over 35 years.

3. The Applicant has further deponed that on 23rd April 2013, the Defendant without any colour of right trespassed and damaged the back fence of his property and also demolished two block build latrines so as to create a road access to serve plot number 49; that the Respondent has threatened to go back and demolish his house and that this court should restrain the Respondent from inflicting any more damage to the property.

4. The Application was served on the Defendant's representative on 2nd May 2013 but the Defendant did not file a Replying Affidavit, Grounds of Opposition or a Notice of Preliminary Objection as required under Order 51, Rule 14 of the Civil Procedure Rules, 2010.

5. In the circumstances, and relying on the Supporting Affidavit and the annexures thereto, and the Plaintiff's oral submissions, I find and hold that the Applicant has established a prima facie case with chances of success. The Applicant will also suffer irreparable loss that will not be compensated by way of damages unless the injunctive is granted by this court.

6. For the above reason, I allow the Application dated 13th May, 2013 as prayed.

Dated and Delivered in Malindi this 20th day of June, 2013.

O. A. Angote

Judge