



REPUBLIC OF KENYA

High Court at Mombasa

Civil Suit 186 of 2012

NGUMBAO ALI MENZA

ALFRED BANDIKA BIRYAPLAINTIFF

VERSUS

KARSAN RAMJI & SONS LIMITED DEFENDANT

RULING

[1] The applicants herein filed their application via a notice of motion dated 6th September 2012. The application seeks for a temporary injunction against the respondents to restrain them from constructing a perimeter wall on what they allege to be their unregistered land known as Misifuni located at Kokotoni-Mazera-Kaloleni District measuring 34.7 Hactares. They claim the respondent has hived off approximately 20 acres of their unregistered land. They annexed to their application various documents, among them a certificate of confirmation of grant of letters of their fathers estate; letters showing that they have commenced the process of setting apart of the land and a map showing the extent and boundaries of the land and a consent duly granted for setting the land apart. The claim they have been living peacefully with the respondent until recently when he started encroaching and hiving of their late fathers land.

[2] The respondent on the other hand filed a reply and denied that he has encroached on the applicants land. They argue that the land the applicant is claiming does not exist in law. That their land has its own title to wit Kawala 'A' Kadzonzo/399 and 405 both located in Kawala 'A' adjudication Section Kilifi District in Mariakani. That it is a first registration. That he has applied and obtained from the Town Council of Mariakani permission to construct the perimeter fence.

The respondent concedes that where the aforesaid lands are situated, that area was declared to be an adjudication section on 18th August 2007 under the provisions of land Adjudication Act Cap. 284 Laws of Kenya.

[3] I have carefully perused all the documents produced by the applicant and the respondent herein. I have carefully read the submissions by the applicant and the respondent herein . I note the respondent does not deny that he is a neighbour to the applicant at all. I note the applicant started by filing a succession cause in 2007 for the letters of administration of the estate of their late father. Without those letters, they would not be able to pursue the Estate of their father. This culminated to the setting apart being Gazetted on 25th November 2011. I have also noted that the respondent was issued with a title deed for Kwala 'A' Kadzonzo/405 on 9th November 2010 and 399 on 5th November 2010. This is about the time the applicant was grappling with setting apart of his fathers land after he obtained letters of administration.

[4] The issue of the applicant and respondent sharing the same boundary or not sharing the same should be canvassed in court. In deciding on that issue on evidence, then it will be clearer to the court whether or not the respondent has encroached on the applicants land.

In the meantime a temporary injunction shall issue on the respondent as prayed in paragraph 3 of the application. This case shall now be fixed for hearing on merit.

It is so ordered.

Dated and delivered in open court at Mombasa this 10th day of June, 2013

**S.N. MUKUNYA
JUDGE
10.6.2013**

In the presence of:

Lisasa Advocate for Munyao Advocate for the plaintiffs

Non appearance for the defendant