



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**CIVIL CASE NO. 123 OF 2012**

**LIKIZO LIMITED.....PLAINTIFF**

**=VERSUS=**

**YERI KOMBE..... 1<sup>ST</sup> DEFENDANT**

**MARTIN KOMBE.....2<sup>ND</sup> DEFENDANT**

**DAVID KITHUNGA.....3<sup>RD</sup> DEFENDANT**

**MUNICIPAL COUNCIL OF MALINDI.....4<sup>TH</sup> DEFENDANT**

**R U L I N G**

1. The Application before me is dated 30<sup>th</sup> July 2012 seeking for the following orders:
  - a. ***THAT the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents by themselves, their agents, servants, and/or employees be restrained by way of injunction from trespassing, encroaching, entering, developing and interfering in any way with plot known as CHEMBE/KIBABAMSHE/407 pending the hearing and determination of this suit.***
  - b. ***That the OCS Malindi Police Station do assist in the execution of the orders granted by the Honourable Court.***
  - c. ***That the costs of the Application be borne by the Defendants/Respondents.***
2. The Application is supported by seven grounds and the affidavit of Timothy Mathew Darlington, the Plaintiff's director.
3. It is the Plaintiff's director's deposition that the Plaintiff was in quiet possession of the suit premises until 28<sup>th</sup> March 2011 when the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants encroached on the said property, brought down part of the fence, removed the Plaintiff's property and put up a stone structure on the property.
4. The Plaintiff's director further stated that during the subsistence of the injunctive orders issued by this court, the Defendants erected an illegal fence on the suit premises, connected electricity and installed guards who have since refused the Plaintiff entry to the suit premises. These actions by the Defendants were reported to Watamu Police Station.
5. The Plaintiff's director finally deponed that the Defendants' actions have occasioned the Plaintiff losses as the Plaintiff had intended to develop the suit premises.
6. The 1<sup>st</sup> Defendant filed a Replying Affidavit on 5<sup>th</sup> June 2013 on his own behalf and on behalf of

- the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
7. The 1<sup>st</sup> Defendant deponed that they have no claim or interest whatsoever on the Plaintiffs parcel of land number Chembe/Kibabamshe/407 and that they have not trespassed and or entered the suit premises as claimed by the Plaintiff; that they are total strangers to the allegations in the Plaintiff's affidavit.
  8. The Defendants have filed a joint Defence in which they have also denied that they have trespassed into the suit property.
  9. In the circumstances, it would not make sense for the court to determine if the Plaintiff has established a prima facie case with chances of success as against the Defendants. The Defendants have admitted that the suit property belongs to the Plaintiff and have denied having trespassed on the land.
  10. However, from the Applicant's Supporting Affidavit, it would appear that there were people on the suit property who were instructed to put up a perimeter fence and even connected electricity and put up some structures. The same people have refused the Plaintiff's agents entry in the suit property.
  11. According to "***Digest of the Law of Evidence***", 12th Edition, Article 41, a Judgment or order of the court is conclusive as against all persons of the existence of the state of things which it actually affects when the existence of that state is in issue or relevant to the issue.
  12. In the circumstances, and considering that the Plaintiff/Applicant has alleged that the Defendants or their agents have invaded its land, I shall issue the injunctive order which shall be in *rem*, that is, as against everybody, in the following terms:
    - a. **THAT the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents by themselves, their agents, servants, and/or employees or any other person acting on his own behalf or on instructions be restrained by way of injunction from trespassing, encroaching, entering, developing and interfering in any way with plot known as CHEMBE/KIBABAMSHE/407 pending the hearing and determination of this suit.**
    - b. **That the O.C.S Malindi Police Station to assist in the execution of this order.**
    - c. **The costs of the Application to be in the course.**

Dated and delivered in Malindi this 18<sup>th</sup> day of July, 2013.

**O. A. Angote**

**Judge**