



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

**AT MOMBASA**

**CIVIL CASE NO. 102 OF 2012**

**ALI BAKARI BOI & 5 OTHERS.....PLAINTIFFS/APPLICANTS**

**- V E R S U S -**

**SHEE HALFAN BOI & 12 OTHERS .....DEFENDANTS/RESPONDENTS**

**RULING**

[1] The applicants pray for a permanent injunction against the respondents from entering into and/or remaining upon the suit properties Kwale/Msambweni "A" 2156 and Kwale/Msambweni "A" 2158. They also pray for an order that the respondents be ordered to give vacant possession of the said lands to the applicants failing which they be evicted by Court Bailiff.

The application is supported by the affidavit of Ali Bakali Boi sworn on 28th May, 2012.

The affidavit merely states that he and 2nd plaintiff are the registered owners and that the respondents have invaded their land.

[2] The respondents filed a replying affidavit through Shee Halfan Boi who swore an affidavit on 25th July 2012 which gives a history of his family tree that includes the applicants. He alleges that there was a case in the now defunct land dispute tribunal at Kwale. He alleges the case was in his favour. He disputes that he has encroached the applicants land.

[3] The prayers in this application are similar to those in the plaint. This court cannot determine the application without determining the suit. This would be undesirable at this stage. The issues at hand should be canvassed by the parties at a full hearing. There is really nothing urgent on this application since the subject matter in the application has been the same as that filed before the District Land Tribunal by the parties herein long before filing this suit.

[4] From the pleadings the court notes that the parties are family members who now reside on the suit properties.

The court is not convinced that the applicant has made out a case for the orders they seek in their application.

This matter should be fixed for hearing on merits. I dismiss this application and order that each party bear their own costs.

**Dated and delivered in open Court at Mombasa this 18th day of October, 2013.**

**S.N. MUKUNYA**

**JUDGE**

**18.10.2013**

In the presence of:

Ogembe Advocate for Mwinyi Advocate for the plaintiffs

Non appearance for the the defendants - served with Judgment Notice.