



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**LAND AND ENVIROMENT CASE NO. 113 OF 2013**

**KHAMISI TSANJE GOGO MUNGU ..... PLAINTIFF/APPLICANT**

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

**KHAMISI MUHAMBI GOGO ..... DEFENDANT/RESPONDENT**

**RULING**

{1} The applicant filed his application dated 29th May, 2013 and prayed for orders that a permanent injunction be issued against the defendant/respondent restraining them either by themselves, their servants and/or agents from entering into and/or remaining in the suit properties known as **Kilifi/Chasimba/374** which is part and parcel of Kilifi/Chasimba/444 and committing any acts of trespass/or wastage howsoever thereon. He prayed for a mandatory injunction to be issued against the defendant restraining them by themselves and or servants and/or agents entering into and remaining on the suit properties aforesaid. He supported his application with his affidavit sworn on 29th May, 2013. In his affidavit he stated that they started to stay on the land parcel **Kilifi/Chasimba/374** and the Kilifi/Chasimba/444 in 1960. That they stayed there up to year 2000 when the defendant obtained alternative title to land. He argued that they have been in occupation which has been open continuous and interrupted. That he has title for Kilifi/Chasimba/444 and 374 before the respondent obtained a fraudulent title of the same. That he has tried to resolve the matter to no avail.

[2] The respondent filed his replying affidavit on 10th June 2013. The respondent argued that he was the son of Muhambi Gogo deceased. That his father had four brothers Gogo Mwangala, Kombo Mwangala, Mumbu Kombo and Abdalla Mwangala who all lived in a large plot of land Plot No. 232 which was registered in the name of the respondents and applicants grandfather Gogo Mungu.

The five sons were granted plots as follows:-

**Plot 374 - Gogo Mwangala**

**Plot 375 - Kombe Mwangala**

**Plot 373 - Mungu Kombo**

**Plot 372- Abdallah Mwangale**

## **Plot 232 - Gogo Mungu**

Gogo Mungu was the grandfather of the applicant. He sold a portion of Plot 232 to Francis Kaingu Mole. Two plots emanated therefrom as 444 and 445 comprising of 4.97 ha and 1.62 ha respectively. Plot no. 374 belonged to the father of the respondent and it was argued that the applicant has no reason to demand 374 for he has not lived there and it is not his.

It was argued that the applicant has no letters of administration of his fathers estate and has no locus to file the suit. That plot no. 444 is still in the applicants' fathers' name.

[3] I have perused the submissions by the applicant and the respondent and perused all the documents before me. I have no doubt that the applicant's application is unmerited. I find no reason to grant the prayers sought, As this application and the suit prays for the same thing, I hesitate to say more lest I determine the suit at an interlocutory stage.

I dismiss the application with costs.

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

**S.N. MUKUNYA**

**JUDGE**

**18.10.2013**

In the presence of

Anyumba Advocate for Mrs.Kipasang Advocate for the defendant/respondent

Applicant in person.