



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 33 OF 2012

ALIKHAN RAHIMKHAN JINDKHAN PLAINTIFF

- Versus -

COUNTY COUNCIL OF KWALE DEFENDANT

RULING

The plaintiff is the owner of Kwale/Ukunda/690 (*the suitland*). On it stands his shop. It is alleged by him that the Defendant is carrying out construction in a manner that is blocking access to the shop.

So the plaintiff has filed suit against the Defendant and in the meantime seeks the following orders in the application of 28th February 2012-

“That the Honourable Court do issue a temporary injunction against the defendants herein, its servants and/or agents restraining them from constructing a building and/or constructing structures or in any other way from dealing with or interfering with a road reserve adjacent to the Plaintiffs plot and or premises on a portion of Plot No. Kwale/Ukunda/690 pending the hearing and determination of this application.”

The application is uncontested and the Defendants did not attend court or file any defence or reply notwithstanding that they were served on 1st March 2012.

The uncontroverted story of the plaintiff is that the Defendants are constructing structures in front of his shop. That the suitland adjoins the Ukunda-Lunga Lunga highway. That this construction, if allowed to continue, will completely block off the entrance to his shop. That his business will suffer and so will he. In addition the construction interferes with drainage from the plot and the shop is at a risk of flooding.

The plaintiff has made out a prima facie case against the Defendants. He is the registered owner of the suitland. The conduct of the Defendant has caused him a nuisance and infringes, limits, or restricts the enjoyment of his proprietary rights. For this reason I am inclined to grant the orders sought.

The application is allowed in the following terms; the Defendant is restrained from constructing a building and/or constructing structures in any manner that interferes, blocks or hinders access to the Plaintiffs plot and or premises on a portion of Plot No. Kwale/Ukunda/690 pending the hearing hereof.

Costs in the cause.

Dated and delivered at Mombasa this 23rd day of March, 2012.

F. TUIYOTT
JUDGE

Dated and delivered in open court in the presence of:-

Mkan for Plaintiff

No appearance for Defendant

Court clerk - Moriasi

F. TUIYOTT
JUDGE