



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MALINDI**

**Civil Suit 97 of 2009 (O.S)**

**IN THE MATTER OF:           LAND PARCEL NO. 150/111/MN  
AND**

**IN THE MATTER OF:           AN APPLICATION FOR DECLARATION THAT  
THE PLAINTIFFS/APPLICANTS HAVE OBTAINED OWNERSHIP OF NINE  
DECIMAL NINE SIX (9.96) ACRES OF THE ABOVE SAID LAND BY WAY  
OF ADVERSE POSSESSION**

**BETWEEN**

**KAHINDI KATANA CHENGO & 19 OTHERS.....PLAINTIFFS**

**VERSUS**

**HAFSA OMAR MZEE HAJI .....DEFENDANTS**

**RULING**

The Originating Summons is dated 27<sup>th</sup> October 2009, and is made under Order XXXIX rule 11, 2, 3 and 9 and section 3A and 3(e) of the Civil Procedure Act.

It seeks that temporary injunction do issue against the defendants by themselves and/or their servants and/or agents or employees or anyone acting on their behalf, so as to restrain them from demolishing the plaintiff's houses or on plot No. 150/111/MN or evicting the plaintiffs/applicants therefrom.

The grounds on which this application arises are that:

- (1) Applicants have been in occupation of the said plot for over 12 years.
- (2) The registered owners of the plot are the defendants who have discontinued their occupation and/or possession of the suit land while the plaintiffs have dispossessed the defendant of their parcel of land.

In the affidavit supporting the application, Kahindi Katana Chengo (the deponent) states that the suit premises is registered in the names of the respondents as per the certified extract of Title and a copy of search (KK2). The applicants have been in occupation with the last ones settling in 1996 and they have remained the continuous and uninterrupted occupation.

In 2002, the 3<sup>rd</sup> respondent obtained eviction orders from the Kilifi Court following an award by the Land Disputes Tribunal in respect of one Boyed Beja Mwamwaka who is residing on the suit premises and purported to use that order to evict all the applicants (who were not affected by those orders) when the applicants protested, the eviction and demolition process was stopped. However on 19<sup>th</sup> March 2009, the

3<sup>rd</sup> respondent and police officers from Kijipwa Police Station went to the suit premises and ordered the applicants to vacate the property. It is deponed that applicants live on and cultivate the land and are pursuing orders for adverse possession so if injunctive orders are not issued, they will lose the only residence they know and will suffer irreparably and that infact no prejudice will be occasioned to the respondents as they are not in actual occupation.

The respondents did not file any responses to the application. From what is presented before this court, the applicants have demonstrated that they have a prima facie case by virtue of them being in occupation then not being registered owners and the intended eviction.

(2) They are likely to have their homes demolished and lose the land they have been tilling – this would be such loss that damages would not be adequate compensation.

(3) They are in occupation of the land unlike the respondent and so even the balance of convenience tilts in their favour.

Due to the foregoing, I allow the application and order that temporary restraining orders do issue against the defendants/respondents and remain in force until the suit is head and determined.

Delivered and dated this 21<sup>st</sup> day of **June 2010** at Malindi.

**H. A. Omondi**  
**JUDGE**

Mr. Shujaa holding brief for Kenga plaintiff