



**Dhadho v Masoud & another (Environment & Land Case 1 of 2021)
[2023] KEELC 21481 (KLR) (8 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21481 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 1 OF 2021
EK MAKORI, J
NOVEMBER 8, 2023
(FORMERLY MOMBASA ELC CASE NO 56 OF 2019)**

BETWEEN

OMAR DHADHO PLAINTIFF

AND

MOHAMED MASOUD 1ST DEFENDANT

COUNTY GOVERNMENT OF TANA RIVER 2ND DEFENDANT

JUDGMENT

1. By plaint dated March 26, 2019, the plaintiff has sued the defendant seeking the following reliefs:
 - a. A declaration that the structure put up by the 1st Defendant is an illegal structure.
 - b. An order directing the Defendant to remove the structure within 14 days.
 - c. Vacant possession
 - d. Costs
 - e. Any other relief
2. Through the defence dated April 25, 2019, the defendant has refuted that claim in its entirety.
3. The plaintiff-acquired land known as Trcc/Lz/C/25 situated at Hola Township within an area known as Laza Tana River County. He carries on commercial business. He pays rates and takes licenses as required by the Tana River County.
4. The plaintiff in his evidence alleged that the 1st defendant had constructed a structure (read his wife) - blocking the plaintiff's frontal view, and impeding customers from accessing his shop, making it impossible for him to freely carry on his business.



5. The defendant testified and called his wife DW2. they said that a licence was granted to DW2 to construct a temporary structure on the disputed portion for purposes of operating a restaurant. The structure is said to be 51 feet from the plaintiff's plot and does not block the plaintiff's business at all.
6. The issue to determine is whether the declarations and orders sought by the plaintiff are tenable.
7. I have considered the materials and submissions from the warring parties. This was a straightforward matter revolving around who has more rights over the protagonists' respective portions. There is no dispute that each owns and uses the respective portions as allocated by the defendant. Each of the parties was lawfully allocated/licensed to operate business on the respective plots by the 2nd Defendant's terms. None of the parties can claim superior rights over the other. Consequently, the plaintiff's claim (s) will not be sustained but dismissed with costs to the defendants.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 8TH DAY OF NOVEMBER 2023.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Magolo for the Plaintiff

Mr. Shujaa for the Defendants

Court Clerk: Happy

