



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO.310 OF 2016

JOSEPH NDUNGI MBULA

**FRANCIS M. NDUNDI MBULA (SUING FOR AND/OR ON BEHALF OF THE
ESTATE OF NDUNDI MBULA KOI (DECEASED)).....PLAINTIFF**

VERSUS

- 1. RUNNY NGAMBA**
- 2. BAYA RAURA TAMAZAN**
- 3. JUMA KULOLWA MWANDENGE**
- 4. SAMSON MWATSUMA**
- 5. SAARI KESI**
- 6. NYAZI MBUMBO DERI**
- 7. KADZO PISHI**
- 8. CHARO GADI**
- 9. KAZUNGU MWARINGA**
- 10. ESTHER KACHE KITSAO**
- 11. DAMA KAINGU TELE**
- 12. KADZO KENAGA YONGO**
- 13. KIBIBI FURAHA KAHINDI**
- 14. RIMBA HAYALOLLA**
- 15. KAHINDI KAHAMBI.....DEFENDANTS**

RULING

1. By this Notice of Motion application dated and filed herein on 15th November 2016, Joseph Ndundi Mbula and Francis Ndundi Mbula suing for and on behalf of the estate of Ndundi Mbula Koi (the Plaintiffs) pray for an order of injunction to issue restraining the fifteen Defendants from entering into, cultivating, selling, erecting any structures or in any manner dealing with Plot No. Kilifi/Mavueni/3B/521.

2. The application which is supported by an Affidavit sworn by Joseph Ndundi Mbula is premised on the grounds:-

i. That the Plaintiffs are the lawful and/or beneficial owners of the said property by virtue of a Grant of Letters of Administration issued in respect of the estate;

ii. That in October 2016 the Defendant invaded and trespassed upon the said property and started felling down coconut and other trees with a view of erecting structures thereon.

iii. That the Defendants have no colour of right to the said properties and unless the orders sought are granted the Plaintiffs stand to suffer loss and damage.

3. The application is opposed. In a Replying Affidavit sworn and filed herein on 9th February 2017 by Runya Gamba (the 1st Defendant) on behalf of himself and the 4th, 8th and 15th Defendants, they deny that they have invaded the said parcel of land as alleged or at all. The Defendants asserts that they occupy their own parcels of land adjacent to the suit property and state that the purported invasion is a creation of the Plaintiffs' imagination.

4. The Defendants however assert that the trees whose photos are annexed to the Plaintiffs' application is on their parcel of land. The 1st Defendant asserts that he has lived on his portion of land since the 1970s and avers that he has no relationship with some of the Defendants herein who are squatters on his land.

5. The other Defendants are equally opposed to the application. In a Replying Affidavit sworn on their behalf by Rimba Hayalolla (the 14th Defendant), the Defendants aver that the Plot they occupy was registered as Kilifi South East Farmers Co-operative Society. They aver that the parcel of land they occupy is more than 50 acres and the Plaintiffs parcel does not neighbour their parcel of land whose title deeds are yet to be issued.

6. I have perused and considered the Plaintiffs application and the response by the Defendants.

7. The Plaintiffs who are the legal representatives of the Estate of Ndundi Mbula Koi accuse the Defendants of invading Plot No. Kilifi/Mavueni/3B/521 sometime in October 2016. It is the Plaintiffs' case that the said parcel of land measuring 0.47 Ha is registered in the name of their father the said Ndundi Mbula Koi who passed away on 8th December 2009.

8. In support of their case the Plaintiffs have produced a copy of Grant of Letters of Administration Intestate issued to them on 10th June 2015 in Malindi High Court Succession Cause No. 139 of 2013. They have similarly produced a copy of a Title Deed issued in the name of their father for the suit property on 8th August 2013.

9. The Defendants on the other hand assert that they occupy a parcel of land separate and distinct from the Plaintiffs' parcel of land. It is their case that they occupy and own Plot Nos. 1, 2, 3 and 4 Group II in Mavueni. Others assert that the land they occupy was registered in the name of Kilifi East Farmers Co-operative Society.

10. While the 1st, 4th, 8th and 15th Defendants deny encroaching on the Plaintiffs' parcel of land, it is noteworthy that the 1st Defendant avers that the trees that the Plaintiffs claim to have been brought down wrongfully are on his land. None of the Defendants have however produced any document in proof of ownership of the parcels of land they claim to be their own.

11. In the circumstances herein and given the title documents produced by the Plaintiffs, I am satisfied that they have made out a prima facie case with a probability of success at the trial. Given that some of the Defendants admit to have cut down trees on a portion of land which the Plaintiffs claim to be part of the suit property, I am satisfied that the Plaintiffs deserve a measure of protection for the suit property pending the hearing and determination of this suit.

12. The application dated 15th November 2016 is accordingly allowed in terms of Prayer No.3 thereof. The costs shall be in the cause.

Dated, signed and delivered at Malindi this 13th day of March, 2020.

J.O. OLOLA

JUDGE