



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL MISC APP NO. 73 OF 2015

1. KARISA AMIN RAMADHAN
2. HIEDEL MARIE GAPNER.....APPLICANT

=VERSUS=

1. BAHATI CHARO
2. MWINYI
3. ANDERSON JAMUHURI MWINYI
4. DANCAN KARISA MWINYI
5. SHILINGI MWINYI
6. DANIEL KITSAO CHARO.....RESPONDENTS

R U L I N G

1. In his Application dated 24th November, 2015, the Plaintiff is seeking for the following orders:

a. THAT this Honourable court be pleased to issue an injunction order to the Respondents to stop, disturb nor interfere, trespassing the suit of land known as KILIFI/MAVUENI B/1188.

b. THAT, the application be heard inter-parties on such a time this Honourable Court may direct.

2. The Application is supported by the Affidavit of the Plaintiffs who have deponed that the Respondents have trespassed on the suit land which they own.

3. According to the Plaintiffs, the Defendants are the owners of parcel of land known as Kilifi/Mavueni "B"/203 and should stop interfering with land known as Kilifi/Mavueni B/1188 (the suit property).

4. In response, the Respondents filed Grounds of Opposition in which they averred that the filed Miscellaneous Application and the orders sought are incapable of being granted and that the Applicants remedy is in a pending suit being ELC No. 211 of 2015 filed by the Defendants.

5. The orders that the Plaintiffs are seeking are for injunctive orders. The said orders are by way of a Miscellaneous Application and final in nature.

6. It is trite that an order of injunction can only be granted at an interlocutory stage where there is a pending suit.

7. In the absence of a Plaint or a Petition, and in view of the deposition by the defendants that indeed there is an existing suit between the Plaintiffs and the Defendants, I find and hold that the Miscellaneous Application dated 24th November, 2015 is incompetent.

8. For those reasons, I dismiss the Application dated 24th November, 2015 with costs.

Dated, signed and delivered in Malindi this **14th** day of **November**, 2016.

O. A. Angote

Judge