



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.159 OF 2011
(Consolidated with ELC No. 111 of 2013)

SALIM ABDALLA BAKSHWEIN.....PLAINTIFF

=VERSUS=

- 1. ERASTIS JUMA KING'ALE**
- 2. EMMANUEL KAHINDI KIPONDA**
- 3. MORIS NGOMA MWATELA**
- 4. KAHINDI MORRIS NGOMA**
- 5. SUKUBA MORRIS NGOMA**
- 6. JESSE MORRIS NGOMA**
- 7. SAFARI KAINGU NGOMA**
- 8. KARISA KAINGU NGOMA**
- 9. KARISA DANA**
- 10. JUMA KARISA**
- 11. GURE KARISA DANA**
- 12. KAINGU KARISA DANA**
- 13. SUEDE NGOMA MWATELA**
- 14. SALIM SUEDE NGOMA**
- 16. HAMISI NZARO**

17. KAZUNG STEPHEN

18. JEFWA STEPHEN

19. JONATHAN MRAMBA THOYA.....DEFENDANTS

RULING

1. What is before me is the Application by the Plaintiff dated 2nd December 2014 in which he is seeking to have Emmanuel Kiponda, Kazungu Katana, Karisa Kaingu, Karisa Nzai, Karisa Dena, Hamisi Nzaro, Suedi Ngoma, Patience Mudza, Kahindi Jefwa, Kahindi Morris and Karisa K. Kimara to be committed to civil jail for being in contempt of the orders of this court of 25th April 2014.
2. According to the Plaintiff's Affidavit, the alleged contemnors have not only continued in their trespass on the suit property but have continued to cultivate and cut down trees and put up new structures.
3. It is the Plaintiff's deposition that since the filing of the suit, the Defendants have not only encouraged new settlers on the suit property but have also resorted to selling parts of the suit property.
4. Emmanuel Kiponda filed a Replying Affidavit and denied having been served with the alleged order of the court.
5. According to Mr. Kiponda, he is not associated with the acts complained of by the Plaintiff.
6. Just like Mr. Kiponda, Mr. Karisa Dina, Karisa Nzai, Karisa Kaingu, Suedi Ngoma Mwatete, Hamisi Nzaro, Patience Mudza and Kazungu Katana all filed Replying Affidavits and denied having been served with the order of the court. They all denied of having been engaged in the allegations raised in the Application.
7. The suit by the Plaintiff is against twenty one (21) Defendants. The Plaintiff is seeking for an order of eviction of the Defendants from the suit property.
8. This suit was consolidated with Malindi HCCC No. 111 of 2013 (os) in which 86 Applicants have sued the Plaintiff herein to be declared the proprietors of the suit property for having stayed on the suit property for over twelve years.
9. Although the court issued a temporary order restraining the Defendants from trespassing on the suit property and carrying out any activities for 14 days, it is not clear whether by that time the Defendants were already on the suit property or not.
10. It is also not clear from the photographs which contemnor was doing what on the suit property.
11. The Application by the Plaintiff to have the alleged contemnors committed to civil jail does not meet the threshold required in such Applications.
12. In any event, the order that was served on the Defendants was only valid for 14 days with effect from 25th April 2014. Most of the photographs that the Plaintiff is relying on were taken on or about 29th October 2014, way after the order had lapsed.
13. In fact, on 19th December 2014, the court ordered that the status quo should be maintained pending the hearing of the suit, meaning that the Defendants who were already on the land were to continue being on the land.
14. In view of the large number of the Defendants on the suit property, the only way of ascertaining the rights of the parties to the suit property is by having the matter heard expeditiously and not filing

applications and in the process adjourning the two matters unnecessarily.

15. For those reasons, I dismiss the Application dated 2nd December 2014 with costs.

Dated and delivered in Malindi this **11th** day of **September** 2015.

O. A. Angote

Judge