



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE NO. 23 OF 2014**

MOHAMED GOLO NDOGO

KUNO GALANO

BAKARI HINDADA (suing as Chairman, Secretary &

Treasurer of BANDI MOSQUE.....PLAINTIFFS

**=VERSUS=**

MOHAMED NDOGE.....DEFENDANT

**RULING**

**Introduction**

1. The Plaintiffs' Notice of Motion is dated 14<sup>th</sup> February, 2014 and is filed pursuant to the provisions of Sections 13 of the Environment and Land Court Act and Order 40 of the Civil Procedure Rules. The Applicants are seeking for the following reliefs:

a) THAT a Temporary Injunction be issued against the Defendant, restraining the Defendant by himself, his servants or agents, his followers or any other person claiming through him, from carrying out any subdivision on the 2 acre unregistered parcel of land situated at Bandi village in Garsen within Tana River County bordered to the North by the land of Boba Batesa, South by land of Hussein Guyole, West by land of Fatuma Jarso and East by land of Barisa Batesa and Mohamed Golo and from constructing any building on the said land pending the hearing and determination of this case.

b) THAT the costs of this application be in the cause.

2. The Application is supported by the Affidavit of the 1<sup>st</sup> Plaintiff who is the Chairman of Bandi Mosque.

**The Plaintiff's/Applicant's case:**

3. The 1<sup>st</sup> Plaintiff has deponed in his Supporting Affidavit that Bandi Mosque is situated on the suit property measuring 2 acres which is an unregistered piece of land in Bandi village in Garsen. There is also a school known as Madrasa Tul Noor situated next to the Mosque which was

- constructed in the year 1992.
4. However, when the Defendant started conducting prayers under the Wahabi Religious practice in the mosque, the worshipers who practice Sunni Religion resolved that the Defendant should cease conducting his prayers in the Mosque; that on 1<sup>st</sup> February, 2014, the Defendant brought surveyors on the suit property and started sub dividing it without the Plaintiff's consent.
  5. It is the 1<sup>st</sup> Plaintiff's deposition that the Defendant does not own the suit property on which he is now constructing his Mosque.

**The Defendant's/Respondent's case:**

6. In his Replying Affidavit, the Defendant has deponed that the suit property is owned by TARDA (Tana River Development Authority); that the Plaintiffs and himself have only been granted permissions to live and erect Mosques on the said land and that the Plaintiff is not a registered society and cannot therefore sue on behalf of Noor Bandi Mosque.
7. The Defendant has further stated in his Affidavit that there exists religious ideological differences between the Plaintiffs and himself which has led both parties to part ways and that he had been conducting his Madrasa in a makeshift walled Mosque for the last seven years.
8. The Defendant denies ever bringing a surveyor on the suit property as alleged and that none of the parties has a legitimate interest on the suit property. However, the Defendant has admitted that he is building a Mosque on the disputed piece of land and that the construction of the said Mosque although on the suit property is far away from the Plaintiff's Mosque.
9. The parties agreed to dispose of the Application by way of written submissions which I have considered.

**Analysis and findings:**

10. It is not in dispute that the suit property measuring approximately 2.0 acres is unregistered land. It would appear, from the Minutes of 13<sup>th</sup> February 2014 annexed on the Defendant's Replying Affidavit as annexure MD2 that the suit property is owned by TARDA.
11. The Defendant has not disputed the fact that the Plaintiff's Mosque has been on the suit property since 1992 and that he used to worship in the said Mosque until when Ideological differences developed between the Plaintiffs and himself.
12. The Minutes annexed on the Defendant's Replying Affidavit do not show that TARDA has allowed the Defendant to proceed with the construction of its Mosque on the suit property. Indeed, those minutes show that the Defendant was stopped from continuing with the construction of his Mosque on the parcel of land.
13. Considering that the Defendant has admitted that the Plaintiff's Mosque has been on the suit property since 1992 to date, I find and hold that the Plaintiffs have shown that they have a *prima facie* case with chances of success *viz-a-viz* the Defendants' claim over the same land. The Plaintiffs should be allowed to continue using the Mosque which is situated on the suit property without interruption by the construction of another Mosque on the same property pending the hearing of the suit. In any event, TARDA, the alleged owners of the suit property have also stopped the Defendant from constructing his Mosque on the land.
14. The confusion that is likely to arise if the Defendant's Mosque is constructed on the suit property is likely to cause the Plaintiffs and their members irreparable damage. Considering that such a scenario is likely to interfere with the conduct of religious services in the Plaintiff Mosque and the Plaintiffs' right of worship. The Plaintiffs have therefore satisfied the conditions that are required for one to be granted the orders of temporary injunction (**see Giella Vs Cassman Brown (1973) EA 358**).
15. For the reasons I have given above, I allow the Plaintiff's Application dated 14<sup>th</sup> February, 2014 as prayed.

Dated and delivered in Malindi this 8<sup>th</sup> day of May, 2014.

**O. A. Angote**

**Judge**