



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

CIVIL SUIT NO.75 OF 2012

HENRY KINYUA.....PLAINTIFF

=VERSUS=

FABIANO W.WANGA.....DEFENDANT

RULING

Introduction

1. What is before me is the Defendant's Application dated 8th April, 2014 seeking for the following orders:-

(a) That the Honourable Court be pleased to issue permanent injunction order restraining the respondent by himself, his servants and or agents and his family members from trespassing, entering, interfering from further damaging the boundary fence and beacons erected by the surveyors thereon.

(b) That the Honourable court be pleased to issue an order directing the OCS Kijipwa Police Station to make sure that this order is respected and complied with.

(c) That costs of this application be in the course.

2. The Application is supported by the Defendant's affidavit who has deponed that he is the owner of parcel of land number 346B situated at Vipingo Trading Centre.

3. The Defendant/Applicant has further deponed that the Plaintiff/Respondent has been trespassing on his land; that despite reporting to Kijipwa Police Station about the trespass, the police have not made any attempt to summon the Respondent

The Plaintiff's/Respondent's case;

4. The Plaintiff/Respondent filed his affidavit and deponed that it is the Defendant and his family who have been trespassing on the suit property despite the order of the court that none of the parties should access the suit property; that he has been charged in Shanzu in criminal case number 294 of 2012 and 857 of 2013 over the suit property and that the Defendant's wife and children demolished his perimeter wall.

5. None of the parties made submission in respect to the Application.

Analysis;

6. Before the filing of the current Application by the Defendant, the plaintiff had filed an Application dated 13th April 2012 seeking for injunction order. When that application came up for hearing, I was informed that the dispute was in respect to the boundary of plot number 348 A which was allocated to the Plaintiff and plot number 348 B that was allocated to the Defendant.
7. On 17th June 2013, this court directed the Kilifi District Surveyor to prepare a report in respect to the boundary of plot number 348 A and 348B and file the same in court. On the same day, and in view of the provisions of section 18 (2) of the Land Registration Act I directed both parties to keep away from the disputed plot until the hearing and determination of the suit. Section 18(2) of the Land Registration Act, 2012 provides as follows;-

“The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section..... Provided that where all boundaries are defined under section 19(3) the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act”

8. The Defendant has not set aside my orders of 18th July, 2013 neither has the report of the surveyor or the Registrar in this issue of the boundary in respect to the two plots filed in this court. In the circumstances, I find the Defendant's Application dated 8th April, 2014 unmeritorious.
9. In any event, the Defendant/Applicant is seeking for a permanent injunction at an interlocutory stage. It is trite law that a permanent injunction can only be granted after full trial.
10. In the circumstances and for the reasons I have given above, both parties should keep off the suit property pending the filing of the surveyor's report and the hearing of the suit.
11. The defendant's Application dated 8th April 2014 is hereby dismissed with no order as to costs.

Dated and delivered in Malindi this 11th day of July, 2014

O.A.ANGOTE

JUDGE

ENVIRONMENT AND LAND COURT