



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 234 OF 2016

FURAHA SEA CHALETS LIMITED.....PLAINTIFF/APPLICANT

VERSUS

1. HASSAN JUMA.....1ST DEFENDANT/RESPONDENT

2. KASSIM SWALEH.....2ND DEFENDANT/RESPONDENT

3. JAFARI ALI SHEKUE.....3RD DEFENDANT/RESPONDENT

RULING

1. By a Notice of Motion dated and filed herein on 14th June 2018, the Plaintiff prays:-

1. That an order be issued for the Respondents to show cause as to why they have re-entered the parcels of land being Plot No. 1054(Original No. 712/21) and Plot No. 1052(Original No. 712/19) belonging to the Plaintiff despite there being a Court order issued on 20th September 2017;

2. That an order of committal to prison to be made against the Defendants/Respondents, for such period as this Honourable Court may deem fit and just in that they have disobeyed the orders made by this Honourable Court in Open Court on 19th September, 2017 and issued on 20th September 2018 allowing the Plaintiff's application dated 7th September 2017 for an order requiring the Defendants to vacate the Plaintiff's parcels of land being Plot No. 1054(Original No. 712/21) and Plot No. 1052 (Original No. 712/19).

2. The said application is premised on the grounds that:-

i) By a Ruling delivered on 19th September 2017, this Court granted mandatory injunction orders compelling the Defendants to demolish and remove all illegal constructions on the said properties;

ii) The said order was served upon the Defendants who have since preferred an appeal against the same;

iii) The Defendants have once again re-entered the suit properties and have embarked on constructing a perimeter wall thereon.

iv) The Defendants have become violent and have hired goons with whom they keep threatening the Plaintiff and his employees whenever they try to enter the suit properties.

3. The Defendants did not file any response to the said application but their Advocate appeared at the hearing hereof and orally responded on what he described as "points of law."

4. I have considered the said application and the oral submissions made thereon by the Learned Advocates for the parties.

5. By an application dated 7th September 2016, the Plaintiff had applied for inter alia a mandatory injunction order compelling the removal of the Defendants from the suit properties. Having considered the said application, this Court delivered a Ruling on 19th September 2017 directing the Defendants to vacate the Plaintiff's parcel of land within 30 days.

6. It was further directed that should the Defendants fail to vacate as directed, an order of their eviction would automatically issue without

any further application to the Court. That eviction was to be effected with the assistance of a Licensed Court Bailiff.

7. As it were, it is apparent from the application before me and the affidavit in support thereof that no effort has been made to evict the Defendants through the Court Bailiff as was directed by the orders issued on 17th September 2017. In the absence of an explanation for that omission, I did not find it prudent to issue any further orders herein.

8. The application dated 14th June 2018 is accordingly dismissed. Each party shall bear their own costs.

Dated, signed and delivered at Malindi this 29th day of May, 2019.

J.O. OLOLA

JUDGE