



REPUBLIC OF KENYA



KENYA LAW
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**Kieti v Seif (Environment & Land Case 143 of 2016)
[2017] KEELC 3857 (KLR) (28 February 2017) (Ruling)**

Henry Wambua Kieti v Yassin Bakari Seif [2017] eKLR

Neutral citation: [2017] KEELC 3857 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 143 OF 2016**

AA OMOLLO, J

FEBRUARY 28, 2017

BETWEEN

HENRY WAMBUA KIETI PLAINTIFF

AND

YASSIN BAKARI SEIF DEFENDANT

RULING

1. The application dated 31st May 2016 and brought under Order 40 rule 1, 2, 3 (1) & 4, Order 51, Rule 1, of the Civil Procedure Rules Section 1A, 1B, 3A and 63 (e) of the Civil Procedure Act. The applicant sought for the orders:
 1. Spent
 2. Spent
 3. The Defendant/Respondent acting by itself or its agents, servants and or employees be temporarily restrained from encroaching into, trespassing, alienating, occupying, erecting buildings and/or other structures, or in any way dealing with or interfering with Kwale/ Msambweni “A”/1587, measuring 0.6 HA, at Msambweni, Kwale County pending the hearing and determination of this suit “hereafter the suit property”.
 4. The Officer commanding Station (OCS) Msambweni Police Station do enforce compliance of this Court’s Order.
 5. The costs of this application are provided for.
2. I have considered the pleadings filed and the written submissions by both parties. The applicant deposed in paragraph 4 of his supporting affidavit “that in the late year 2014, I realised that the



defendant had trespassed and/or encroached on a portion of my land measuring 0.6 ha.” This suit was filed on 31st May 2016 more than one year after the alleged encroachment had taken place. Further paragraph 6 of the affidavit in support, the applicant deposed that the surveyor came and identified the extent of the encroachment as 0.1 ha.

3. The defendant on his part deposed that he is residing on plot No Kwale/Msambweni ‘A’/889 registered in the name of Nikulo Mohamed Gaziya – deceased which land has not been subdivided. The defendant annexed a copy of the official search and a map showing the existence of plot No 889.
4. The applicant is seeking orders restraining the defendant or his employees from, “encroaching into, trespassing, alienating, occupying, erecting buildings and or other structures” pending determination of the suit. These acts the applicant wants restraining orders have already taken place since the defendant is alleged to have entered the land in late 2014. Secondly the defendant alleges that where he lives is a different parcel of land. In the circumstances if the temporary orders of injunction are granted at this stage the defendant may be evicted before the suit is heard on its merits.
5. The applicant has also not demonstrated to Court that the loss he is likely to suffer will be irreparable. On the principal of balance of convenience, the same tilts in favour of the Respondent who is in possession. I am therefore not satisfied of any merit in the application. I order that it be dismissed with costs to abide the outcome of the main suit.

DATED AND DELIVERED IN MOMBASA THIS 28TH DAY OF FEBRUARY 2017.

A. OMOLLO

JUDGE

