



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

**AT MALINDI**

**ELC CIVIL CASE NO. 193 OF 2016**

**1. LODOVICO GENTILE**

**2. ELLEN ALTMEIER GENTILE.....PLAINTIFFS**

**=VERSUS=**

**1. SARA CENTOFANTI**

**2. BILAL CHAUDRI.....DEFENDANTS**

**R U L I N G**

1. In the Application dated 28<sup>th</sup> July, 2016, the Plaintiffs are seeking for the following prayers:

**(a) THAT this Honourable Court be pleaded to issue temporary injunction orders to restrain the Defendants/Respondents either by themselves, their servants, agents, or employees from entering into, trespassing, encroaching, demolishing, destroying, damaging, wasting, constructing thereof, or in any manner whatsoever interfering with the Plaintiffs' parcels of land known as Portion Number 624/56 as delineated on Land Survey Plan Number 161825 annexed to the Certificate of Title C.R. 23156 and Portion Number 624/57 as delineated on Land Survey Plan Number 161826 annexed to the Certificate of Title C.R 23153 both located in the North of Mambui Town in Kilifi County pending hearing and final determination of the main suit.**

**(b) THAT this honourable Court be pleased to issue an order directing the Defendants/Respondent to open up an access road to the public beach and Angel Bay Estate.**

**(c) THAT this honourable Court be pleased to issue an order directing the Defendants/Respondents, their servants and/or agents to forthwith pull down and remove a wall built by the Defendants/Respondents on the Plaintiffs'/Applicants' property.**

**(d) THAT the officer commanding Malindi Police Station to enforce the orders of this Honourable Court.**

**(e) THAT cost of this application be provided for.**

2. According to the Affidavit of the Plaintiffs' Manager, the Plaintiffs are the registered owners of parcels of land known as L.R. No. 624/56 and 624/57; that the Plaintiffs have enjoyed peaceful and quiet possession of the suit property and that in June, 2016, the Defendants descended on the suit property and

brought down a section of the perimeter wall, put up structures thereby closing down the public access to the public beach and Angel Bay Estate.

3. In response, the 2<sup>nd</sup> Defendant deponed that the 1<sup>st</sup> Respondent's mother purchased House No. 231 from Angels Bay Limited in 1995 situated on Portion No. 798; that the Applicants also purchased a house at Angels' Bay and that the Applicant purchased Portion No. 8 "except where it was coloured red on the plan, being the road commonly used by Angels Bay residents".

4. It is the Respondents' case that in the month of August 2014, the Applicants erected a wall on the access road that was being used by the Respondents and other residents of Angels Bay.

5. The 2<sup>nd</sup> Respondents deponed that they have no knowledge about Portion No. 624/56 and 624/57 and that the Applicants obtained ex parte Injunctive orders based on misrepresentation of facts.

6. The advocates for the Applicants and the Respondents filed submissions which I have considered.

7. In their Complaint, the Plaintiffs are seeking to restrain the Defendants from trespassing on land known as portion number 624/56 and 624/57. In the meantime, the Plaintiffs are seeking for temporary injunctive orders.

8. The Defendants have deponed that they do not have interests over the suit properties, save that the Plaintiffs have closed what they consider to be a public road.

9. The issue of whether portion number 625/56 and 625/57 is what used to be a public access road can only be ascertained after trial.

10. In view of the fact that the Plaintiffs are in possession of Certificates of Title for the suit property, and until the said titles are cancelled by this court, the Plaintiffs are entitled to a quiet and peaceful possession of the said land.

11. In the circumstances, I shall, which I hereby do, allow the Application dated 28<sup>th</sup> July, 2016 as prayed.

Dated, signed and delivered in Malindi this 3<sup>rd</sup> day of **February**, 2017.

**O. A. Angote**

**Judge**