



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

**AT MALINDI**

**ELC CASE NO. 127 OF 2016**

**STEFANA NICOLOSI.....PLAINTIFF**

**=VERSUS=**

**GARAMA SHUTU MITSANZE aka**

**GABRIEL GARAMA.....1<sup>ST</sup> DEFENDANT**

**FRANCIS KARISA NGUMBAO.....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

1. The Notice of Motion before me is the one dated 24<sup>th</sup> May, 2016. In the Application, the Plaintiff is seeking for the following reliefs:

**(a) THAT the Respondents, their servants, agents, employees and /or any other person claiming under them be restrained by way of temporary injunction from dealing, leasing, constructing, selling, cultivating, wasting, damaging, intruding, trespassing, developing and/or interfering with plot number 60 in Mambrui/Sabaki Squatter Settlement Scheme pending the hearing and determination of this suit.**

**(b) THAT the costs of this application be provided for.**

2. According to the Plaintiff's Affidavit, he bought one (1) acre of land from the late Shutu Mitsanze Mwaboya vide an agreement of 17<sup>th</sup> December, 2004; that on 10<sup>th</sup> April, 2006, he purchased a further 1.58 acres from the family of Shutu Mitsanze and that by the time of the purchase, the letter of offer was still in the name of Shutu Mitsanze Mwaboya who is the father of the 1<sup>st</sup> Respondent.

3. It is the Plaintiff's case that at the time of the purchase, the Respondents agreed to demolish the structures that were on the land and that the 1<sup>st</sup> Respondent has now refused to vacate the land and to hand over to the original letter of offer.

4. In response, the 1<sup>st</sup> Respondent deponed that the Applicant has not described the suit property; that the 1<sup>st</sup> Respondent's father had no capacity to execute the sale agreements since the letter of offer is not a proprietary document and that it is unfair to restrain the 1<sup>st</sup> Respondent's family from utilizing plot number 60 Mambrui which they all live on.

5. In his further Affidavit, the Plaintiff has deponed that after demolishing the Respondent's homes as per the agreement, he moved on the land and that he has been in occupation of the same for the past ten (10) years.
6. The parties' advocates' filed submissions which I have considered.
7. It is not in dispute that the Defendant's father sold land measuring 2.58 acres to the Plaintiff vide sale agreements dated 17<sup>th</sup> December, 2004 and 10<sup>th</sup> April, 2006.
8. The agreement of sale exhibited by the Plaintiff shows that the 1<sup>st</sup> Respondent was one of the witnesses to the said agreements.
9. Indeed, in the letter dated 18<sup>th</sup> October 2013, the village elder confirmed that it is the Plaintiff who is entitled to the suit land. The Assistant Chief of Mamboreni Sub location also supported that position vide his letter dated 25<sup>th</sup> February, 2014.
10. The Defendant has not laid any basis to show that prime facie, the sale Agreements of 17<sup>th</sup> December, 2014 and 10<sup>th</sup> April 2006 are invalid.
11. For those reasons, I allow the Application dated 24<sup>th</sup> May, 2016 in the following :

**(a) THAT the Respondents, their servants, agents, employees and /or any other person claiming under them be and is hereby restrained by way of temporary injunction from dealing, leasing, constructing, selling, cultivating, wasting, damaging, intruding, trespassing, developing and/or interfering with plot number 60 in Mambrui/Sabaki Squatter Settlement Scheme pending the hearing and determination of this suit.**

**(b) THAT costs of this application be provided for.**

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

**O. A. Angote**

**Judge**