



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

**AT MOMBASA**

**ELC CASE NO. 124 OF 2016**

**BAKARI SAID MAJENI.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**1. SHAFI SAID MWNYOTA**

**2. MOHAMED SULEIMAN MWADZUNGWE.....DEFENDANTS/RESPONDENTS**

**RULING**

1. The application dated 18<sup>th</sup> August 2016 is brought under the provisions of Order 40 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The plaintiff/applicant seeks for orders: -

**a) Spent**

**b) Spent**

**c) That pending the hearing and determination of the suit herein the Honourable Court be pleased to issue a temporary injunction restricting the defendants, their authorized agents and or servants from trespassing on the piece of land known as KWALE/UKUNDA/4806 constructing and or carrying on with the construction of the illegal structures and or dealing with the same in any manner whatsoever.**

**d) That the costs of this application be provided for.**

2. The application is supported by the grounds listed on its face, the supporting affidavit sworn on 18<sup>th</sup> August 2016 and the further affidavit sworn on 13<sup>th</sup> September 2016. Briefly, the applicant avers he is the registered owner fo the suit land Kwale/Ukunda/4806. That sometimes on 10.8.2016, the defendants and/or their authorized agents trespassed on the applicant's land and cut down unknown number of coconut trees and constructed thereon permanent structure.

3. The application is opposed via a replying affidavit sworn by the 1<sup>st</sup> Respondent. He deposed that the suit land is a subdivision of Kwale/Ukunda/1043 that was jointly owned by his late father Said Ali Majeni together with four others. That the applicant obtained letters of administration from the Kadhi's Court in which he omitted the 1<sup>st</sup> Respondent as a beneficiary. That the Kadhi on realising the fraud wrote a letter dated 5<sup>th</sup> November 2012 which he annexed as "SHM-5". He therefore urged the Court to dismiss this application with costs.

4. I have considered the pleadings filed in respect of this application and note the following: -

- i) The suit land is previously owned by the father of the applicant and the 1<sup>st</sup> Respondent.**
- ii) The applicant in paragraph 3 of his supporting affidavit deposes that the defendants entered the land in 2007 and erected structures thereon albeit without his consent.**
- iii) He acquired the title for the suit property on 30<sup>th</sup> April 2013 after obtaining grant of letters of administration from the Kadhi's Court in succession cause No 90 of 2012 or 36 of 2007.**
- iv) According to the applicant, this land was given to him.**

5. The applicant vide his own pleadings admit the defendants have been on the land since 2007. However because he has secured the title into his name, he wishes the defendants move out as their stay on the land now constitutes to trespass. The plaintiff does have a point but if the Court grants this order at an interlocutory stage, it means the Court will be authorising an eviction without giving the defendants and opportunity to present their case. The further affidavit filed by the applicant does mention other parcels of land owned by their late father and how they were shared amongst his siblings. There is no document annexed to support such agreement and or an order from the Court.

6. Further in annexure BSM-3 the D.O's letter dated 19<sup>th</sup> October 1993, it stated in 2<sup>nd</sup> last paragraph thus ***"In that meeting, they all agreed in accordance with the wishes of the family of the deceased that a son of the deceased by name Bakari Saidi Majeni – ID No 3166020/66 become the administrator of the above land title Kwale/Ukunda/1043. His name should be entered in the register to replace that of their father – the late SAIDI ALI MAJENI."*** In my interpretation of this statement, appointment as an administrator is not equivalent to being bequeathed the land as is being alleged by the applicant.

7. Consequently it is my finding that the facts of this case do not merit the granting of an injunction. In any event the applicant has not stated what irreparable harm he will suffer if the orders are not granted. The balance of convenience also tilts in favour of the defendants who are in possession. The interests of justice is to have the prevailing status quo maintained until the suit is heard and determined. In the result, I find the application dated 18<sup>th</sup> August 2016 as an abuse of the Court process, lacks merit and is hereby dismissed with costs to the defendants.

**Dated, signed and delivered at Mombasa on 11<sup>th</sup> day of April 2017.**

**A. OMOLLO**

**JUDGE**