



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 257 OF 2016

ANDERSON MWALUGO FAIDA.....PLAINTIFF/APPLICANT

VERSUS

ALI MOHAMED MZUNGU.....1ST DEFENDANT/RESPONDENT

JEREMIAH KARISA MUMBA ...2ND DEFENDANT/RESPONDENT

RULING

1. In the Application dated 23rd September, 2016, the Plaintiff is seeking for the following orders:

a. That this Honourable Court be pleased to issue a temporary order of injunction restraining Defendants/Respondents by themselves, their relatives, their servants, agents, employees and/or any other person acting under their authority from trespassing, encroachment, construction and/or dispossession, interfering and/or disposing off the Applicant's parcel of land pending hearing and determination of this suit.

b. That cost of this Application be provided for.

2. The Application is premised on the grounds that the Plaintiff bought a parcel of land known as Kilifi/Kibarani/488 (*the suit land*) in the year 1985 from Katune Bofu; that the Applicant has been enjoying and living peacefully on the said land and that the Respondents have continued to interfere with the suit land.

3. The Plaintiff has annexed on his Supporting Affidavit a copy of the Title Deed which was issued to him on 5th January, 1998.

4. In response to the Application, the 2nd Defendant deponed that he is the owner of Plot No. 920 situated at Kibarani Settlement Scheme; that the 1st Defendant's plot is No. 921 and that the Plaintiff has failed to attend meetings meant to identify the boundaries of the said plots.

5. The 2nd Defendant denied ever interfering with the suit properties.

6. Both the Plaintiff and the Defendants represented themselves and did not submit.

7. The 2nd Defendant exhibited on his Affidavit the copy of the Registry Index Map which shows that plot numbers 920, 921 and the suit property abutt each.

8. It would appear that the dispute herein is about the boundary, and specifically the boundary between plot numbers 921 and 488.

9. The 2nd Defendant has denied that he has interfered with the suit property.

10. In the absence of a Surveyor's report showing that the Defendants have encroached on the Plaintiff's land, and in view of the provisions of Section 18 of the Land Registration Act which provides that all disputes relating to boundaries should be handled by the Land Registrar, I decline to issue the orders being sought.

11. For those reasons, I dismiss the Plaintiff's Application dated 23rd September, 2016 with costs.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J.O. LOLA

JUDGE