



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 201 OF 2015

**IN THE MATTER OF: LAND PARCEL PLOT NO. 21 AND 22 GROUP V (WEST OF
TAKAUNGU TOWNSHIP TITLE NUMBER LT. 22 FOLIO 74 FILES)**

**IN THE MATTER OF: AN APPLICATION FOR DECLARATION THAT THE
PLAINTIFFS/APPLICANTS HAVE OBTAINED OWNERSHIP OF SIXTEEN (16) ACRES OF
THE ABOVE SAID LAND BY WAY OF ADVERSE POSSESSION**

BENJAMIN KAHINDI KATANA.....1ST PLAINTIFF/APPLICANT

KARISA CHAI MANGI.....2ND PLAINTIFF/APPLICANT

KATANA CHAI MANGE.....3RD PLAINTIFF/APPLICANT

NGUMBAO MWATETE.....4TH PLAINTIFF/APPLICANT

SAFARI NGUMBAO.....5TH PLAINTIFF/APPLICANT

KESI NGUMBAO.....6TH PLAINTIFF/APPLICANT

KAHINDI NGUMBAO7TH PLAINTIFF/APPLICANT

JOSEPH NGUMBAO MWATETE.....8TH PLAINTIFF/APPLICANT

VERSUS

MURTAZA SHABBIR TAYABALI.....1ST DEFENDANT/RESPONDENT

QUTBUDDIN SHABBIR TAYABALI....2ND DEFENDANT/RESPONDENT

MABETE PROPERTIES LTD.....3RD DEFENDANT/RESPONDENT

LABAN NJENGA KAGIMBI.....4TH DEFENDANT/RESPONDENT

FEDINARD NDUNDI MWAMBIRE.....5TH DEFENDANT/RESPONDENT

RULING

1. In the Application dated 29th October, 2015, the Plaintiffs are seeking for the following orders:

a. That pending the hearing and determination of this suit, the Honourable Court be pleased to grant a permanent injunction restraining the Defendants/Respondents by themselves, their servants and/or agents or anybody authorized by them from constructing, evicting, selling, transferring, carrying out destruction and/or any further dealings of the land interfering with the Applicants' use and occupation of Plot No. 21/22 Group V (West of Takaungu Township) comprised in Title L.T. 22 Folio 74 File 3294.

b. That the costs of this Application be provided for.

2. The Application is based on the grounds that the Applicants have been in occupation of the land known as Plot No. 21/22 Group V (*West of Takaungu Township*) (*the suit property*); that the Respondents intent to sell the suit land and that the Applicants intent to dispossess them the land that they have lived on for more than 65 years.

3. In the Affidavit, the 1st Applicant has deponed that the Applicants represent family units that include a father, sons and grandsons and mothers, daughters and grand-daughters; that they have been living on the suit land without interruption since 1934 and that they are now living under fear of being evicted by the Defendants.

4. The Defendants' case on the other hand is that the 3rd Defendant purchased the suit land from the 1st and 2nd Defendants on 25th October, 2011; that there is a pending matter being Kilifi PMCC No. 31 of 2010 and that parcel of land number group V/22 does not exist after the same was sub-divided into 55 portions.

5. It is the Defendants' case that parcels of land No. Group V/21 and 22 are distinct parcels of land; that the Plaintiffs only invaded the suit property in the year 2013 and that they constructed temporary structures thereon.

6. The Defendants have deponed that they made efforts to ensure that the Plaintiffs do not invade the suit land and that some of the Applicants were charged in Kilifi Criminal Case No. 113 of 2015.

7. According to the Defendants, the Applicants have actually settled on Plot No. 48 which is a public utility.

8. The 1st Applicant filed a Supplementary Affidavit and reiterated that the Applicants have been on the suit land for more than 12 years.

9. The advocates for the parties filed submissions which I have considered.

10. The Applicants are seeking to be declared the owners of Plot No. 21/22 Group V (*West of Takaungu Township*) by virtue of adverse possession.

11. It is the Applicants' case that they have lived on the land for more than 12 years without any interruption from the registered owners of the land.

12. Although the Defendants have claimed that the Applicants invaded the land between the years 2013 and 2015, and that some of the Applicants have been charged for trespass, it is only after trial that the court will be able to ascertain the date and year that the Applicants entered the suit land.

13. The circumstances under which the Applicants entered the land shall also be determined at trial.

14. For now, the most appropriate order that can be made is for the prevailing *status quo* to be maintained pending the hearing of the suit.

15. For those reasons, I shall make the following specific orders:

a. The prevailing status quo as at the date of this judgment to be maintained, meaning that the Applicants should remain on the portions of land that they already have structures of whatever nature pending the hearing and determination of the suit.

b. The Applicants should not put up any other structures of whatever nature on the suit land pending the hearing and determination of the suit.

c. Each party to bear his own 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. OLOLA

JUDGE