



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 121 OF 2016

ENOCK CHIO ZIROPLAINTIFF

VERSUS

RAYMOND MAKUPE TUNJE.....DEFENDANT

RULING

1. In the Application dated 18th May, 2016, the Plaintiff is seeking for the following reliefs:

a. That pending hearing and determination of this suit the Defendant, his employees, servants and or agents be restrained from trespassing and dealing with the suit property, until the hearing and determination of this suit.

b. That costs for this Application be provided for.

2. The Application is premised on the grounds that the Applicant is a resident of Dindiri village, Kilifi County; that the Defendant has trespassed on the land and that he is the owner of un-surveyed plot measuring two (2) acres.

3. In response, the Respondent stated that he is the owner of the said 2 acres situated in Dindiri village in Chonyi area of Kilifi County.

4. According to the Defendant, he inherited the said land from his late father and that he has utilized the land for the past 50 years; that the Applicant has failed to disclose that he own the land next to the suit property and that the dispute was heard and determined by the Land Disputes Tribunal.

5. It is the Defendant's case that the Tribunal found that it was his late father who had occupied the land for over 40 years and that it is the Plaintiff who has been destroying his crops on the suit land.

6. I have considered the brief submissions that were filed by the parties.

7. Although the Plaintiff claims that the un-surveyed land in Dindiri village belongs to him, he has not offered any evidence to show, *prima facie*, that he is the owner of the said land.

8. The Defendant on the other hand produced a copy of the proceedings of the panel of elders chaired by the Assistant chief in which the elders established that it is the Defendant's father who has been utilizing the suit property for more than 40 years.

9. In the circumstances, I dismiss the Plaintiff's Application dated 18th May, 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. OLOLA

JUDGE