



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

**AT MALINDI**

**ELC CIVIL CASE NO.163 OF 2014**

**HARUSI KENGA CHAI.....PLAINTIFF**

**=VERSUS=**

**1. ABDALLA KAGULA.....DEFENDANT**

**2. SALIM SAID KITUNGUU.....DEFENDANT**

**3. MTAANI KISUMU NDOGO UPGRADING PROJECT**

***(SUED THROUGH ITS CHAIRMAN NELCON CHAI.....DEFENDANT***

**R U L I N G**

1. The Application before me is the one dated 27<sup>th</sup> August, 2014 and filed by the Plaintiff. The Plaintiff is seeking for the following orders:

**(a) THAT a temporary injunction be issued restraining the Defendant/Respondent by themselves, agents, servants, workmen, legal representatives, administrators or anyone claiming interest through them from trespassing, entering, remaining, constructing, alienating, selling, leasing, transferring, and/or dealing with the suit property in any manner whatsoever pending the hearing and determination of this suit.**

**(b) THAT costs to this Application be provided for.**

2. The Application is premised on the grounds that the Plaintiff has been in actual possession and occupation of the suit property for more than 30 years and has fully developed it; that the Plaintiff was identified as one of the squatters in respect of the suit property and that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have since trespassed on the Plaintiff's land on the allegation that they have been allocated the same land by the 3<sup>rd</sup> Defendant.

3. According to the Plaintiff's Affidavit, he has been living on plot number 5054/1145 with other people for many years and that when they formed the 3<sup>rd</sup> Defendant's organisation, each squatter was allocated a portion of land.

4. The Plaintiff has deponed that he was allocated plot number 239 which is within original plot number 5054/1145 which he has since developed by putting up a permanent building.

5. In his reply, the 1<sup>st</sup> Defendant deponed that he is the lawful allottee and registered owner of L.R.

- NO.5054/1145 (original plot number 329); that the said land was originally allotted to the 2<sup>nd</sup> Defendant who is his relative way back in the year 1994 and that out of love and affection, the 2<sup>nd</sup> Defendant transferred the suit property to him with the consent of the 3<sup>rd</sup> Defendant and that the Plaintiff has never been a squatter on the said land.
6. The Respondent denied that the Applicant has a permanent building on the suit plot other than the shallow hole which the Applicant dug; that the Applicant has never owned plots within Kilifi Township and that her husband was allocated plot number 333 now L.R. No.5054/1156.
  7. The Plaintiff/Applicant filed a Supplementary Affidavit in which she deponed that she paid deposit on 19<sup>th</sup> April 1995 while the Respondent paid deposit on 19<sup>th</sup> April 1996; that in any event, the 1<sup>st</sup> Respondent has not displayed any proof of payment of the requisite fees of Kshs.11,230 and that the letter by the Chief is an illegal instrument.
  8. I have considered the submissions by the Plaintiff's and the Defendants' advocate.

**Analysis and findings:**

9. The Plaintiff's claim against the Defendant is that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant do not have any right over plot number 329 which was curved out of L.R.No5054/1145 situated at Mtaani/Kisumu Ndogo within Kilifi town.
10. Although the Plaintiff has referred the suit property in the Plaint as plot number 329, the deposition in the Supporting Affidavit shows that the Plaintiff's claim is in respect to plot 239. The prayers being sought in the Application do not state the plot in respect of which the injunction order should issue.
11. According to the Plaintiff's Affidavit, she was allocated plot number 239 within the original plot number 5054/1145 by the 3<sup>rd</sup> Defendant. A receipt for Kshs.200 dated 18<sup>th</sup> February 1995 has been annexed on the Plaintiff's Affidavit for plot number 329, together with a membership receipt of the same date for Kshs.100.
12. Other than the receipts dated 18<sup>th</sup> February 1995 amounting to Kshs.600, the Plaintiff annexed on the Affidavit photographs showing the building stones that the Defendants have purportedly deposited at the site. The photographs also show an incomplete structure which the Plaintiff claims he is putting up on the suit property.
13. It would appear that the dispute between the Plaintiff and the Defendants has been dealt with before by the 3<sup>rd</sup> Defendant and the Chief.
14. In its Minutes of 26<sup>th</sup> March 2003, the 3<sup>rd</sup> Defendant's Resident's Committee comprising of thirteen members deliberated on the dispute between the Plaintiff and the 1<sup>st</sup> Defendant in respect to plot number 329.
15. After hearing the parties, the Committee ruled that the 1<sup>st</sup> Defendant should remain as the owner of the disputed plot. The committee further ruled that the Plaintiff herein should be compensated for the pit latrine on the plot at the rate of Kshs.300 per foot.
16. The position of the Committee was upheld by the Chief vide his letter of 23<sup>rd</sup> June 2014.
17. It would appear that when the Committee was deliberating on the issue in the year 2003, the Plaintiff had not constructed any house on plot No. 329.
18. It is not clear why the Plaintiff proceeded to put up the incomplete structure appearing in the photographs annexed on his Affidavit even after the Committee ruled that he was not entitled to the suit land.
19. The evidence before me shows that the 1<sup>st</sup> Defendant was allocated plot 329 by the 3<sup>rd</sup> Defendant. The 1<sup>st</sup> Defendant has annexed the 3<sup>rd</sup> Defendant's proceedings and the Beacon Certificate which was issued by the 3<sup>rd</sup> Defendant dated 26<sup>th</sup> February 1994 to the 2<sup>nd</sup> Defendant in respect to plot no. 329. The 2<sup>nd</sup> Defendant then transferred the land to the 1<sup>st</sup> Defendant. That position was confirmed by the Chief in his letter dated 23<sup>rd</sup> June 2014.
20. There is no evidence that the 3<sup>rd</sup> Defendant indeed allocated to the Plaintiff Plot NO. 329, save for the payment of membership fee of Kshs.100 and for the beacon certificate.
21. Considering the evidence before me, I find and hold that the Plaintiff has not establish a prima facie case with chances of success.

22. Considering that the Plaintiff does not live on the suit property, and in view of the findings by the Resident's Committee that the Plaintiff should be compensated for the pit latrine that she had dug on the suit property, the Plaintiff can adequately be compensated by way of damages in the event his suit succeeds.

23. For those reasons, I dismiss the Application dated 27<sup>th</sup> August, 2014 with costs.

**Dated and delivered in Malindi this 26<sup>th</sup> day of February, 2016.**

**O. A. Angote**

**Judge**