



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.60 OF 2015

MOREEN HILL.....PLAINTIFF/APPLICANT

=VERSUS=

CHECKI WOOD.....DEFENDANT/RESPONDENT

R U L I N G

1. What is before me is the Application by the Plaintiff dated 17th April 2015 seeking for the following orders:-
 - (a) **THAT a temporary injunction do issue restraining the Defendant by herself, agents, servants, employees, proxies, cronies, relatives, friends and any person acting under her authority from trespassing, encroaching, disposing of, alienating and/or in any manner the Plaintiff's parcel of land or any portion thereof known as L.R. NO. 8595 situated at Watamu Kilifi County pending hearing and determination of this Application inter partes.**
 - (b) **THAT temporary injunction do issue restraining the Defendant by herself, agents, servants, employees, proxies, cronies, relatives, friends and any person acting under her authority from trespassing, encroaching, disposing of, alienating and/or in any manner the Plaintiff's parcel of land or any portion thereof known as L.R.NO.8595 situated at Watamu, Kilifi County pending hearing and determination of this suit.**
 - (c) **That costs of this application be costs in the cause.**
2. The Application is premised on the ground that the Applicant is the registered proprietor of land known as L.R. No.8595/1 and L.R. No. 8595/2; that the Defendant being the owner of L.R. No. 8594 has encroached on the Plaintiff's drive way and irregularly placed new beacons in disregard to the existing ones and that the said actions by the Defendant are unlawful and illegal.
3. In his response, the Respondent has deponed that all the beacons as appear on the survey plan and the deeds for both properties are located in the correct position.
4. The Respondent has deponed that the surveyor for both parties confirmed in their reports that there is "a line beacon" that is off the line by an insignificant margin and that the insignificant movement may have resulted from natural movement of the land.
5. It is not in dispute that parcel of land known as L. R. No.8595 situated in Watamu, Kilifi is registered in the name of the Plaintiff while the Defendant is the registered proprietor of the neighbouring plot, to wit, L.R. NO. 8594.
6. According to the report of the District Surveyor, beacon L1, which is between the two plots, was

- found to have been placed 0.25 meters (0.82 feet) off the boundary line, which according to the surveyor, is insignificant.
7. According to the said survey, the parties present at the time of the survey agreed that beacon number L1 be removed.
 8. It is not in dispute that there was an encroachment on the Plaintiff's parcel of land. The Defendant has agreed to have beacon L1 moved.
 9. However, a movement of the beacon to the neighbouring land, however insignificant, is an encroachment. Consequently, I allow the Plaintiff's Application dated 17th April 2015 as prayed with no order as to costs in so far as parcel of land known as L. R. 8595 is concerned.
 10. If the Defendant has moved the beacon to the correct position, then the suit is moot and the parties should record a consent settling the matter.

Dated and delivered in Malindi this 26th day of **February** 2016.

O. A. Angote

Judge