



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

**AT MALINDI**

**ELC CIVIL CASE NO. 40 OF 2015**

**WILLIAM KAHINDI NYUNDO.....PLAINTIFF**

**=VERSUS=**

**KENGA CHENGO KASISI.....DEFENDANT**

**R U L I N G**

1. The Application before me is the one dated 11<sup>th</sup> March, 2015 seeking for the following orders:-
  - (a) **Pending the hearing and determination of this suit, an injunction do issue restraining the defendant whether by himself, his family members, servants, employees and/or agents or any others who may be claiming through him, from entering and undertaking any construction, cutting down crops, burning vegetation or in any manner whatsoever interfering with the Plaintiff's enjoyment of his portion of land which is part of plot NO. M7 Kilifi including throwing stones or any other objects at the residence of the applicant.**
  - (b) **The cost of this application are awarded to the Plaintiff.**
2. The Application is grounded on the facts that the Plaintiff is the beneficial owner of the suit portion being part of plot number 7 Kilifi; that the Defendant has invaded the property and that the Defendant's defiance 13 years after he was stopped from the construction is an act of impunity.
3. In his Supporting Affidavit, the Applicant deponed that he is the beneficial owner of land measuring approximately 4 acres; that he purchased his land from one Rashid Abdalla vide an agreement dated 13<sup>th</sup> January, 2002 for Kshs.40,000 and that in the year 2003, the Defendant invaded the land.
4. According to the Applicant, the Respondent was arrested and charged for forcible detainer and that the trial court found as a fact that the land belonged to him (the Plaintiff).
5. In his response, the Respondent deponed that he is the owner of the disputed parcel of land; that he has stayed on the land for over 50 years together with his family and that the Plaintiff's suit does not have high chances of success.
6. The advocates filed brief submissions in which they reiterated their client's deposition. I have considered the said submissions.
7. The Plaintiff's claim in this matter is that he purchased land measuring approximately 4 acres consisting of land known as Block 7 at Mjibu Kibarani measuring 31.2 acres.
8. The Plaintiff has produced the agreement he entered into with the purported seller, Mr. Rashid Abdalla for the 4 acres dated 15<sup>th</sup> January, 2002.
9. Other than the agreement of 15<sup>th</sup> January, 2002, the Plaintiff has not produced any other document

- to show how Mr. Rashid came to own either the whole of Block 7 or a part of the land thereof.
10. Indeed, the Respondent in this matter was accused in Kilifi Criminal Case No. 2239 of 2003 for forcible detainer.
  11. According to the particulars of the offence, between 10<sup>th</sup> July, 2002 and 13<sup>th</sup> June, 2003, the accused (Defendant) without any colour of right held possession of plot no. 7.
  12. After the trial court heard the matter, it held as follows:-

**“Exclusive title has not been established as the one who sold to him Rashid did not establish title in the first place and could not transfer any title....”**

13. The trial court proceeded to acquit the accused (Defendant).
14. Just like in the criminal case, the Plaintiff has not established how Mr. Rashid came to own the disputed land.
15. There is no evidence before the court to show the proprietary interest of either the Plaintiff or Mr. Rashid in the suit property.
16. In the circumstances, the Plaintiff has not established that he has a prima facie case with chances of success.
17. Consequently, I dismiss the Application dated 11<sup>th</sup> March 2015 with costs.

Dated, signed and delivered in Malindi this 22<sup>nd</sup> day of April, 2016.

**O. A. Angote**

**Judge**