



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

**AT MALINDI**

**ELC NO. 99 OF 2015**

**DICKSON MBATE NGAMBA.....PLAINTIFF**

**=VERSUS=**

**JACKSON KACHORORO NGAMBA.....DEFENDANT**

**R U L I N G**

1. The Application by the Plaintiff is dated 23<sup>rd</sup> June, 2015. In the Application, the Plaintiff is seeking for the following orders:-
  - (a) **An injunction do issue against JACKSON KACHORORO NGAMBA the Defendant herein, by himself, family members, his servants and/or agents from cultivating, clearing, trespassing, digging up foundation, impeding the Plaintiff in any manner interfering with the Plaintiff's right of quite enjoyment of that registered piece of land approximately by measurement 1.1 Ha in Title No. Mbwaka/Maereni/109 comprising 2.2 Ha pending the hearing of this application interpartes.**
  - (b) **The officer commanding Mariakani/Kilifi Police station (OCS) to enforce this order.**
  - (c) **Cost be in the cause.**
2. The Application is premised on the grounds that the Applicant is the step brother of the Defendant; that both of them are the legal owners of the suit property measuring 2.2 Ha; that both of them have been in occupation of the land with each one of them using 1.1Ha and that the Defendant has invaded the Plaintiff's share of the land.
3. The Plaintiff has deponed that he entrusted the Defendant with his identification documents with the understanding that in the event that the adjudication officers collect the details of the occupiers of the land in the area, he would surrender the documents on his behalf.
4. According to the Plaintiff, in total disregard and in breach of the trust bestowed on the Defendant, when the land adjudication officers visited the area to ascertain the individuals owning the land in the area, the Defendant only provided his identification documents and had the whole land registered in his favour.
5. It is the Plaintiff's case that he has always been in possession of 1.1 Ha of the suit property and that it was not until recently when some strangers invaded the land and cultivated it.
6. In his Affidavit, the Respondent deponed that their late father had three wives; that his family and the Applicant's family were to divide one piece of land equally; that the Applicant and his brother sold their portion to their brother in law, James Chomo for Kshs.1,000 and that he refunded to the Applicant's brother in law Kshs.1,920 by the consent of all the parties and took possession of the

- land that the Applicant had sold.
7. During the transaction, the Respondent deponed that the demarcation process had not commenced; that he was issued with a title deed in 1985 and that the Plaintiff is time barred.
  8. The parties appeared before me and made oral submissions. I have considered the affidavits on record and the oral submissions.
  9. The Plaintiff has annexed a Title Deed in his affidavit showing that the Defendant was registered as the proprietor of Mwaka/Maereni/109 on 2<sup>nd</sup> July, 1985.
  10. According to the Plaintiff, the Defendant had the whole parcel of land measuring 2.2Ha fraudulently registered in his favour after he gave him his national identity.
  11. The Plaintiff has not explained why he gave to the Defendant who is his step-brother his national identity if indeed he has always been occupying the suit property.
  12. The Plaintiff has also not explained why he never sought for the cancellation of the title deed that was issued to the Defendant in 1985 immediately the Title Deed was issued in favour of the Defendant considering that the adjudication process in the area was completed around the year 1985.
  13. The Defendant has annexed on his Further Affidavit an agreement that was done on 18<sup>th</sup> February, 1973 showing the refund that the Defendant made to the person that the Plaintiff had sold the suit property.
  14. The Plaintiff has not denied that the agreement of 18<sup>th</sup> February, 1973 ever existed. That agreement, prima facie, must have been the reason as to why the Plaintiff never objected to the allocation of the suit property to the Defendant.
  15. Considering that it is the Defendant who is in possession of a Title Deed and in view of the agreement of 18<sup>th</sup> February, 1973, I find that the Plaintiff has not established a prima facie case with chances of success.
  16. For those reasons, I dismiss the Plaintiff's Application dated 23<sup>rd</sup> June, 2015 with costs.

Dated, signed and delivered in Malindi this **20<sup>th</sup>** day of **May**, 2016.

**O. A. Angote**

**Judge**