



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

**AT MALINDI**

**ELC CIVIL CASE NO. 3 OF 2016**

**AGGREY NZALA OMU.....PLAINTIFF**

**=VERSUS=**

- 1. KIZO LIMITED**
- 2. PATRICK KAMUNZU**
- 3. THE CHIEF LAND REGISTRAR**
- 4. THE HONOURABLE ATTORNEY GENERAL**
- 5. KETAN DOSHI.....DEFENDANTS**

**R U L I N G**

**Introduction:**

1. In his Application dated 7<sup>th</sup> January, 2016, the Plaintiff is seeking for the following orders:-

**(a) There be a temporary injunction barring the Defendant, his servants and or agents from trespassing, felling any trees, erecting any buildings or structure or in any way interfering with the Plaintiff's possession of all that property known as Land Reference Number MN/III/4404 (original Number 4394/3) pending the hearing of the suit.**

**(b) There be a permanent injunction barring the Defendant, his servants and or agents from trespassing, felling any trees, erecting any buildings or structure or in any way interfering with the Plaintiff's possession of all that property known as Land Reference Number MN/III/4404 (original number 4394/3)**

**(c) Costs incidental to and arising from this application be borne by the Defendants.**

2. The Plaintiff's case is that he is the registered proprietor of L.R No. MN/III/4404 situated in the South of Takaungu, Kilifi (the suit property); that he purchased the suit property from Ketan N. Doshi on 20<sup>th</sup> December, 2005 and that he took possession of the land and fenced it.

3. According to the Plaintiff, the 1<sup>st</sup> Defendant's agent called him on phone and informed him that the 1<sup>st</sup> Defendant was the proprietor of the suit property and that if indeed the 1<sup>st</sup> and 2<sup>nd</sup> Defendants hold a title

document in respect of the suit property, then the same is a forgery.

4. In his response, the Attorney of the 1<sup>st</sup> Defendant deponed that on 5<sup>th</sup> June, 1992, the 1<sup>st</sup> Defendant was allocated an unsurveyed land known as LR No.MN/III/428-431 measuring 11.11 acres; that the 1<sup>st</sup> Defendant has been in possession of the suit property since it was issued with the letter of allotment and the title document and that the Plaintiff's purported title for LR No. MN/III/4404 is situated in Mtwapa and not on the second row of the beach as alleged.

5. I have considered the submissions that have been filed by the parties.

6. Both the Plaintiff and the 1<sup>st</sup> Defendant are claiming to be the owners of the suit property.

7. While the Plaintiff has exhibited a Certificate of Title for LR No. 4404 measuring 1.067 which is in his names, the 1<sup>st</sup> Defendant has exhibited the letter of allotment, the survey plan and an official search for plot number 2055/III/MN measuring 4.490 Ha.

8. Indeed, until this court receives evidence from the surveyors on whether LR No. 4404 and plot number 2055/III/MN refers to the same piece of land, or whether one of the title documents is a forgery, this court cannot at this stage ascertain if, prima facie, the Certificate of Title held by the Plaintiff is a genuine title.

9. Neither the Plaintiff nor the 1<sup>st</sup> Defendant have exhibited photographs to show the developments that they have made on the land to enable the court decide the Application on a balance of convenience.

10. In the circumstance, the order that is just in the circumstance is for both parties to keep off the suit property until the suit is heard and determined.

11. For those reasons, I make the following orders:-

**(a) Neither the Plaintiff nor the 1<sup>st</sup> Defendant or their servants, employees and/or agents should deal with the suit property in any manner whatsoever pending the hearing and determination of the suit.**

**(b) Each party to bear his/its own costs.**

Dated, signed and delivered in Malindi this 16<sup>th</sup> day of **September**, 2016.

**O. A. Angote**

**Judge**