



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 5 OF 2015

FRESCO BUSHLANDS (K) LIMITED.....PLAINTIFF

=VERSUS=

1. WARSAME MOHAMED ISSAK

2. MOHAMMED YUSUF HORAR

3. MOHAMED ALI MAHAT

4. NASTE DAUD

5. AGRICULTURAL DEVELOPMENT CORPORATION.....DEFENDANTS

R U L I N G

1. In its Application dated 25th February, 2016, the Plaintiff is seeking for the following orders:-

(a) THAT an order of injunction do issue restraining the 1st to 4th Defendants by themselves or their hirelings, employees, servants, agents and/or any person acting on their behalf from evicting, threatening the agents of the Plaintiff from the structures or houses on land parcel number Reference Number 14248 situate within Kilifi County or demolishing the said houses or in any other way acting in a manner that may negatively affect the Plaintiff's rights and/or interests in the said structures/house pending the hearing and determination of the suit.

(b) THAT costs be provided for.

2. The Application is premised on the grounds that the Plaintiff is a lessee of 95,000 acres of L.R. No.14248 situate within Kilifi County; that the Plaintiff has structures within the suit property and that the 1st to the 4th Defendants agents, hirelings and servants went to the said structures and threatened the Plaintiff's agents.

3. In response, the 3rd Respondent deponed that indeed the Plaintiff has leased 95,000 acres of land from the 5th Defendant; that from the survey plan, it is clear that there exists distinct borders between the Plaintiff's land and the Defendants' and that him, together with the 1st and 2nd Defendants have been appointed as the caretakers of Vital Bioenergy who have also leased a portion of L.R.No.14248.

4. The advocates appeared before me on 13th April, 2016 and made oral submissions which I have considered.
5. There is no dispute that both the Plaintiff and the 1st to 4th Defendants' principal, Vital Bioenergy, have leased land from the 5th Defendant.
6. Indeed, both parties have filed the survey report showing the acreage and the coordinates representing the land they have leased from the 5th Defendant.
7. The GPS coordinates "UTM ARC 1960" annexed on the affidavits shows that the Plaintiff has leased 95,000 acres while Vital Bioenergy has leased 70,000 acres. The two parties' parcels of land abutt each other.
8. Considering that the two parcels of land have clearly marked GPS coordinates, I would not expect any of the parties to encroach on the land of the other.
9. It is for this reason that I allow the Application dated 25th February, 2016 as prayed.

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

O. A. Angote

Judge