



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

**AT MALINDI**

**ELC CIVIL CASE NO. 227 OF 2014**

**JOHNSON GATHERU  
MWAURA.....PLAINTIFF**

**=VERSUS=**

- 1. PATRICK CHOME NGALA**
- 2. KILIO CHA MASKINI WELFARE SOCIETY**
- 3. GILBERT K. SHUTU**
- 4. SIMON K. MALUA**
- 5. ELIZABETH MACHARIA**
- 6. SARAH KONDE**
- 7. GRACE KAZUNGU**
- 8. EDDIE NYIRO**
- 9. PETER KAINGU**
- 10. SUNIL  
MEDIRATTA.....DEFENDANTS**

**R U L I N G**

1. In the amended Notice of Motion dated 17<sup>th</sup> July, 2015, the Plaintiff is seeking for the following orders:-

**(a) THAT pending the hearing and Determination of this suit, a temporary injunction do issue restraining the 1<sup>st</sup> Defendant his servants, Agents and/or any person acting under the 1<sup>st</sup> Defendant's authority from trespassing, encroaching upon, subdividing, purporting to sell or dispose off, building upon, constructing upon, damaging, wasting and or in any manner whatsoever carrying out any activities or purporting to deal or at all over the suit property to wit the un surveyed/unregistered plot no. 66 within the larger portion known as Plot No.411/R in Maweni area, Malindi measuring 35 X 100 meters.**

**(b) THAT pending the hearing and determination of this Application, the Defendant by himself, his agents and/or servants be compelled by way of an order of mandatory injunction to pull down and/or uproot the illegal structure put up by his agents over the Plaintiff's land to wit the unsurveyed/unregistered Plot No.66 within the larger portion known as plot no.411/R in Maweni area, Malindi measuring 35 X 100 meters.**

**(c) THAT the costs of this Application be in the cause.**

2. In support of the Application, the Plaintiff has deponed that sometimes in 1987, his brother, Elijah Njoroge Mwaura, rented a house at Maweni Plot No.411/R from Patrick Chome who was then a squatter on Plot No.411/R.

3. It is the Plaintiff's deposition that the squatters formed an organisation known as Kilio cha Maskini to acquire Plot No.411/R by paying Kshs.15,000 as deposit.

4. It is the Plaintiff's deposition that he acquired a beneficial interest in the suit property when he bought it from his brother who was among the original squatters on the land vide an agreement dated 10<sup>th</sup> April, 1997; that he has paid Kshs.95,000 in fulfillment of the purchase price and that he has put up a house on the suit property.

5. It is the the Plaintiff's case that the 1<sup>st</sup> Defendant, through his agents, has encroached upon and constructed a foundation on the suit property.

6. In response, the 1<sup>st</sup> Defendant deponed that he owns the suit property vide a sale agreement dated 22<sup>nd</sup> June, 1992 with Kilio cha Maskini Welfare; that he paid Kshs.8750 on 22<sup>nd</sup> June, 1992 as part payment of the purchase price leaving a balance of Kshs.26,250 and that he immediately took possession and occupation of the land by putting up a temporary house.

7. According to the 1<sup>st</sup> Defendant, he never sold the plot to one Elija Njoroge but only leased the plot to him and that he later on fenced off the plot.

8. It is the deposition of the 1<sup>st</sup> Defendant that Kilio cha Maskini Welfare resolved the dispute between the two of them in his favour and that the documents that the Plaintiff is relying on are forged.

9. The parties' advocates filed brief submissions which I have considered.

10. Both the Plaintiff and the 1<sup>st</sup> Defendant are claiming for an unsurveyed piece of land within L.R No.411/R in Maweni Area, Malindi.

11. According to the Plaintiff, the suit property is unregistered plot number 66 measuring 35 X 100 meters.

12. The Plaintiff's claim is premised on the ground that he purchased the suit property from his brother, Elija Njoroge who was the initial squatter on the land. Thereafter, he paid the purchase price of Kshs.95,000 to Kilio cha Maskini Welfare who were supposed to pay off the registered proprietor of L.R.No.411/R.

13. The Plaintiff has produced a copy of the agreement that Elija Njoroge purportedly entered into with Kilio cha Maskini together with receipts amounting to Kshs.18,500 being the amount that Elija Njoroge paid to Kilio cha Maskini Welfare, with Kshs.3,000 being the membership fees.

14. The Plaintiff has also annexed a handwritten agreement that he entered into with Elija in respect to the suit property dated 10<sup>th</sup> April, 1997.

15. Several receipts purportedly issued by Kilio cha Maskini in respect of a plot within plot 411/R were

exhibited by the Plaintiff, the latest receipt being for Kshs.85,000 dated 12<sup>th</sup> August, 2014.

16. From the photographs annexed on the Plaintiff's Affidavit, it would appear that the disputed plot is a vacant piece of land.

17. The 1<sup>st</sup> Defendant on the other hand has produced a copy of the Sale Agreement dated 22<sup>nd</sup> May, 1992 that was entered into between himself and Kilio cha Maskini welfare. The 1<sup>st</sup> Defendant has produced a few receipts that were issued to him by the same organisation.

18. None of the agreements and receipts produced by both parties describe the plots that the two are claiming.

19. Indeed, this court is unable at this stage to ascertain the plots that both the Plaintiff and the 1<sup>st</sup> Defendant acquired from Kilio cha Maskini Welfare.

20. In the absence of clarity by both parties at this stage, and in view of the amorphous agreements that Kilio cha Maskini Welfare entered into with the two parties, the just order that this court can make in the circumstances is the maintenance of the status quo.

21. For those reasons, I dismiss the Plaintiff's Application dated 17<sup>th</sup> July, 2015 and make the following orders:-

**(a) The status quo to be maintained pending the hearing and determination of the suit, meaning that neither the Plaintiff nor the Defendant or their agents, servants or employees should interfere with the suit premises in any manner whatsoever pending the hearing and determination of the suit.**

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

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

**O. A. Angote**

**Judge**