



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CIVIL CASE NO.209 OF 2015**

- 1. WEDO ABADIRA GUYO
- 2. ABDIRAHAMAN ABADIBA
- 3. KUNYO GUYO.....PLAINTIFFS

=VERSUS=

- 1. BOCHA KUKUYU KOMONANI
- 2. BATI SAKO KOMONANI
- 3. MOHAMED MOTANYI KOMONANI.....DEFENDANTS

**R U L I N G**

1. What is before me is the Application by the Plaintiff dated 12<sup>th</sup> November, 2015 seeking for the following orders:-

**(a) THAT the respondents by themselves, servants, agents or any other person claiming under their authority be temporarily restrained from trespassing into, sub-dividing, alienating, transferring or in any other way dealing with Bara Farm measuring approximately 300 acres or any part thereof pending hearing and determination of the main suit.**

**(b) THAT cost of the application be awarded to the applicant.**

2. According to the 1<sup>st</sup> Plaintiff's deposition, he is the eldest son of Abidiba and a beneficiary of 300 acres that were given to them by their grandfather, Guyo Chimpa (deceased); that all the other Plaintiffs are his brothers and have settled on the suit property and that the Respondents who are his nephews were given 200 acres of land by his grandfather.

3. It is the 1<sup>st</sup> Plaintiff's deposition that the Defendants laid claim on the suit property by attempting to adjust the boundary marks; that the elders resolved that the Respondents had trespassed into Bara Farm and that part of the suit property being claimed by the Respondents was reserved for cultivation and grazing of livestock.

4. In response, the 1<sup>st</sup> Defendant deponed that they were born and brought up on the suit property; that

after the death of their parents, the 1<sup>st</sup> Defendant's brother started making allegations that they had altered boundaries and that the matter was referred to the area chief who adjudicated over the dispute.

5. It is the Defendants' case that after the deliberations before the Chief, a big valley was dug to serve as a boundary between the two portions of land and that when the matter was escalated to the higher authority, it was confirmed that the Plaintiffs were wrong.

6. The Applicants' advocate filed brief submissions in which he reiterated the Plaintiffs' depositions.

7. The Plaintiffs and the Defendants are members of the family of the late Guyo Chimpa.

8. According to the Plaintiffs, their family was allocated 300 acres by their grandfather while the Defendants were allocated 200 acres.

9. The Plaintiffs case is that the Defendants have moved the boundary that was set up by the patriarch, the late Guyo Chimpa.

10. It would appear that neither the Plaintiffs nor the Defendants have surveyed the land that was purportedly allocated to them.

11. Indeed, it is not clear to this court the kind of boundary the late Guyo Chimpa put up to separate the land in respect to the two families.

12. The evidence before me shows that the Chief, the village elders and the County Government have all attempted to resolve the dispute between the two families.

13. Considering that there is no evidence on record to assist the court to precisely state the extent of the Plaintiffs' land, I am of the view that pending the hearing and determination of the suit, the boundaries that were determined by the area Chief should be observed by the two families.

14. In the circumstances, I dismiss the Plaintiffs' Application dated 12<sup>th</sup> November 2015 with no orders as to costs and direct as follows:-

**(a) The trench/valley that was dug on the instructions of the area Chief to serve as a boundary between the two families to be maintained pending the hearing and determination of the suit.**

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

Dated, signed and delivered in Malindi this 14<sup>th</sup> day of **September**, 2016.

**O. A. Angote**

**Judge**