



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

**AT MALINDI**

**ELC CIVIL CASE NO.6 OF 2016**

**CHEBUSWA LIMITED.....PLAINTIFF**

**=VERSUS=**

**1. MONIKA AKULO OUMA**

**2. PAOLA TARSIA INCURIA**

**3. ENRICO RADICI.....DEFENDANTS**

**R U L I N G**

1. The Application dated 3<sup>rd</sup> March, 2016 and filed by the Plaintiff is seeking for the following orders:-

**(a) THAT a temporary injunction be and is hereby issued directing Dorado Cottages resort by themselves or through their servants or agents to remove the barricade on access plot 10885 and allow the Plaintiff/Applicant access to its property plot 1356.**

**(b) THAT, ENRICO RANDICI, the director of the Dorado Cottages be committed to civil jail for a period to be determined by this court for contempt of court for having deliberately disobeying the orders of this court.**

2. The Application is based on the grounds that Dorado Cottages Resort and its Director Enrico Randici have refused the Plaintiff access to its plot number 1356 through plot number 10885; that the said contemnor has refused to remove a barricade mounted on the access which is on plot 10885 and that the continued disobedience of the order of the court is impeding and perverting the course of justice.

3. It is the Plaintiff's case that Dorado Cottages Resort and its Director Enrico Rendici are the Defendants' agents and that on 23<sup>rd</sup> February, 2016, its directors in the company of Jackline Chepkwony and her employee were denied access to plot 1356 through plot 10885.

4. In response, the Attorney of Mr. Enrico Randici deponed that the alleged contemnor is the owner of Dorado Cottages situated on L.R. NO.1355 which borders L.R. No.10885 and L.R. No.1356.

5. It is the case of the alleged contemnor that Dorado Cottages were erected on L.R. No.1355 in 1984 and that the suit proeprty (L.R. 10885) has been used as access by himself and the Applicant.

6. According to the Attorney of the alleged contemnor, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sued him in ELC No. 214 of 2015 in which they sought to evict him; that he is not the agent of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as alleged and that he has an order in ELC No. 214 of 2015 restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from interfering with the use and occupation of the suit property.

7. It is the alleged contemnor's case that the barrier that the Plaintiff is complaining about has been on the suit property for the past twenty years and that the status quo order that he obtained in ELC Case No. 214 of 2015 meant that the barrier should continue being on the suit property.

8. The advocates for the respective parties filed written submissions which I have considered.

9. It is not in dispute that on 13<sup>th</sup> January, 2016, this court restrained the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from interfering with the Applicant's access to its property, being plot number 1356 through the access plot known as 10885. These orders were extended on 26<sup>th</sup> January, 2016 and 9<sup>th</sup> February, 2016.

10. It is the Applicant's case that the interim orders of injunction that were issued by this court were served upon Dorado Cottages Resort and its director Enrico Rendici, acting as the agent of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, on 2<sup>nd</sup> February, 2016.

11. According to the Plaintiff's director, the security guard of Dorado Cottages Resort denied him to access his plot number 1356 through plot number 10885 contrary to the order of the court.

12. The Attorney of Enrico Rendici has denied that the said Enrico is an agent of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

13. According to the Attorney of Enrico (the alleged contemnor), he has a dispute similar to the present case, between himself and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

14. I have perused the Notice of Motion in Malindi ELC Case No. 214 of 2015 between Antlants (K) Ltd and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein.

15. In that suit, Dorado Cottages, owned by the Plaintiff, alleged that they have been using L.R. No. 10885 (the suit property) to access their plot being L.R. No. 1355 since 1984; that the Defendants have threatened to fence off the suit property and that the suit property has always been used by themselves and the members of the public.

16. It is therefore obvious from the pleadings in ELC No. 214 of 2015 that both the Plaintiff herein and the alleged contemnor have sued the Defendants so as to allow them to access their respective plots through plot number 10885.

17. The drift of the Plaintiff's case herein and the case of Dorado Cottages in ELC No. 214 of 2015 is that what is now known as L.R. No. 10885 is actually a public access road.

18. If that is so, then it cannot be said that the alleged contemnor is the agent of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

19. The Plaintiff herein did not sue the alleged contemnors and cannot therefore say that he is in contempt of the orders of the court when he is neither a party to this suit nor an agent of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

20. Considering that the alleged contemnor is also in possession of an order of this court in ELC No. 214 of 2015, and to avoid conflicting and embarrassing orders being issued in this matter and in ELC No. 214 of 2015, the two matters should be consolidated to enable the court make appropriate orders in respect of the suit property.

21. In the circumstances, there is no proof before me to show that Enrico Redici is in contempt of the orders of this court.

22. Consequently, I dismiss the Application dated 3<sup>rd</sup> March, 2016. Each party to bear his/its own costs.

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

**O. A. Angote**

**Judge**