



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 1 OF 2016 (OS)

1. JOSEPH KARISA
2. HARISSON CHANGAWA
3. MICHAEL SULUBU
4. ERIC JENO
5. HARRISON CHANGAWA
6. MICHAEL SULUBU
7. ERICK JENO
8. KALU BIRYA
9. WANJE MWANDORI
10. TOM LEWA
11. SHIDA CHARO
12. BARAKA WANJE
13. FURAHA WANJE
14. MWALIMU NZAI
15. PAULO NGUMBAO
16. GARAMA KAZUNGU
17. RAMA CHARO
18. BARAKA MTAWALI
19. DANIE NZAI
20. DANIEL FONDO

21. KAZUNGU KUPEKA.....PLAINTIFFS

=VERSUS=

1. ABDULLAIHIM JUNDUIN

2. AZZIZ ABDULAIHIM

3. SULEIMAN ABDULLAIHIM

4. RASHID ABDULLAIHIM

5. SAIDI ABDULLAIHIM

6. SULEIMAN SAID.....DEFENDANTS

R U L I N G

1. What is before me is the Application dated 25th February, 2016 filed by the 6th Defendant.

2. In the Application, the 6th Defendant is seeking for the following reliefs.

(a) THAT the suit and or Originating Summons dated 5th January, 2016 against the 6th Defendant be struck out with cost to the 6th defendant

(b) THAT cost of the application to be provided for.

3. The Application is grounded on the 6th Defendant's deposition that he does not have an interest over the suit property; that it is not true that he has been harassing the Plaintiffs and that his interest is on Plot No. 102 which is distinct from the suit property.

4. According to the 6th Defendant, he only reported to the police when the 13th Plaintiff together with other people invaded his land and that the said 13th Plaintiff together with others were charged in court for forcible entry.

5. In the Grounds of Opposition, the Plaintiffs advocate averred that the suit as against the 6th Defendant is merited because of his interference with the Plaintiffs' peaceful possession of the suit property; that the issue raised in the current Application should be ventilated at the hearing and that the determination of the land that is occupied by the Plaintiffs shall be determined at the hearing.

6. In the Originating Summons the Plaintiffs are asking this court to declare them as the owner of land measuring approximately 20 acres being a portion of Land Reference No. Portion No. 161 B having adversely occupied it for over twelve (12) years.

7. According to the Originating Summons, the suit property should be subdivided into two portions with 15 acres being allocated to the Plaintiffs and the 1st to the 5th Defendants to keep the remainder of the land.

8. In the grounds in support of the Originating Summons, the Plaintiffs have averred as follows:-

“The Plaintiffs have always lived in this land believing that it was unregistered land until lately when the 6th Defendant who has no known claim over the land started harassing the Plaintiffs by misuse of police force from Malindi Police Station.”

9. It is therefore obvious, as deponed by the Plaintiffs and the 6th Defendant, that the 6th Defendant has no interest whatsoever in the suit property. His interest is in respect to a different piece of land.

10. Consequently, the Plaintiffs have no basis in suing the 6th Defendant considering that their claim is to be declared the owners of 15 acres of the suit property.

11. If the Plaintiffs' position is that the 6th Defendant is harassing them using the police, then their cause of action as against the 6th Defendant is distinct from the present claim.

12. In the circumstances, I find that the suit as against the 6th Defendant is likely to embarrass the 6th Defendant who has no interest in the suit property. The joinder of the 6th Defendant in this matter is scandalous, frivolous and vexatious.

13. For those reasons, I allow the Application dated 25th February, 2016 as prayed.

Dated, signed and delivered in Malindi this **14th** day of **November**, 2016.

O. A. Angote

Judge