



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CIVIL CASE NO. 172 OF 2013**

1. KAZUNGU FONDO SHUTU

2. HABEL KAHINDI CHARO.....PLAINTIFFS

=VERSUS=

JAPHET NOTI CHARO.....DEFENDANT

**R U L I N G**

1. The current Application was filed by the Defendant and it is dated 11<sup>th</sup> September, 2014. In the Application, the Defendant is seeking for the following orders:

**(a) That the Plaintiffs/Respondents be summoned to appear before court and show cause why they should not be committed to civil jail for a period not exceeding six months for being in contempt of court by virtue of the ruling and order of the 5<sup>th</sup> day of September 2014.**

**(b) That an order be issued to remove all structures the Plaintiffs/Respondents have forcefully started to erect on the suit property.**

**(c) That costs of this application be provided for.**

2. The Application is premised on the grounds that the Plaintiffs/Respondents have failed to understand the Ruling delivered on 5<sup>th</sup> September 2014; that the Plaintiffs are now using the Ruling of 5<sup>th</sup> September 2014 as an eviction order when it is not the case and that the Plaintiffs have now cut down the Defendant's fence on the suit property.

3. In their Replying Affidavit, the 1<sup>st</sup> Plaintiff/Respondent deponed that they have not defied the court orders; that they are in occupation of 1 ½ acres of the suit property as per the agreement they entered into with the Defendant; that the injunction was as against the Defendant/Applicant and not them and that the issue of contempt cannot arise.

4. The advocates for the parties filed their submissions in which they reiterated their client's cases.

5. The Plaintiffs in this case moved the court by way of an Application dated 30<sup>th</sup> September 2013

seeking for an order of injunction restraining the Defendant from entering into and interfering with quiet possession of their share in land comprised in plot C1084, Malindi.

6. On 5<sup>th</sup> September 2014, I delivered my Ruling in which I restrained the Defendant/Applicant from alienating, transferring or charging the suit property.

7. The effect of my order was that the Defendant was not to sell Plot C10840 in which the Plaintiffs are claiming that they are entitled to approximately 1 ½ acres.

8. In my Ruling, I stated that whether the Plaintiffs are entitled to 1 ½ acres of the suit land or not can only be determined during the hearing of the suit. At paragraph 18 of the said Ruling, I stated as follows:

**“However, pending the hearing of the suit, and considering that the Defendant has not denied that he signed the two agreements, the interests of justice demand that the status quo pertaining now should be maintained....”**

9. From the photographs annexed on the Affidavit, it would be difficult for the court to know on which portion of the suit property the Plaintiffs are putting up structures.

10. There is no evidence before me to show that the Plaintiffs are in contempt of the order of this court or that the status quo contemplated by the court in the Ruling of 5<sup>th</sup> September 2014 has been altered by the Plaintiffs/Respondents. In a nutshell, there is no order, whether positive or negative, that is enforceable as against the alleged contemnors.

11. For those reasons, I dismiss the Application dated 11<sup>th</sup> September 2014 with costs.

Dated and delivered in Malindi this 15<sup>th</sup> day of May, 2015.

**O. A. Angote**

**Judge**