



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.54 OF 2014

NGUMBAO CHEA KALAMA.....PLAINTIFF

=VERSUS=

KARISA CHETI MASHA.....DEFENDANT

RULING

Introduction:

1. The Application before me is the one dated 14th March 2014 seeking for the following orders:

(a) Pending the hearing and final hearing of this Application inter partes, this Honorable Court be pleased to issue a temporary injunction restraining the 2nd Respondent, whether by himself, servants and/or agents from evicting, interfering with the Applicant's quiet enjoyment of plot no. 317/Tezo/Roka Settlement Scheme (hereinafter referred to as the suit land) and from selling, alienation or in any manner dealing with the suit land until hearing and final determination of this suit.

(b) The costs of this Application be in the cause.

The Plaintiff's/Applicant's case:

2. In his Supporting Affidavit, the Applicant has deponed that the Respondent's father was allocated the suit property; that the Respondent, his late father and family have never occupied, used or possessed the suit land and that he has been in possession of the said land since 1978.
3. According to the Applicant, the Respondent and his father have always known that he is occupying, possessing and using the suit property peacefully and without interruption.

The Defendant's/Respondent's case:

4. In the Replying Affidavit, the Respondent has deponed that his father was allocated the suit property in the year 1978 and that prior to the demise of his father in 1993, he had planted coconut palms on the suit property.
5. It is the Defendant's case that in the year 2013, the Applicant trespassed on the suit property and erected illegal structures thereon whereafter he filed a suit in Kilifi PMCC No. 297 of 2013.
6. It is the Defendant's deposition that as a squatter, the Plaintiff cannot purport to have a superior

- title.
7. I have considered the brief submissions filed by the parties.

Analysis and finding:

8. The Plaintiff is seeking to be declared the owner of the suit property having been in possession of the same for a long period of time.
9. Although the Defendant claims that the Plaintiff trespassed on the land in the year 2013, the circumstances under which the Plaintiff entered the suit can only be considered during trial.
10. In the circumstances, the Defendant should allow the Plaintiff to continue occupying the suit property pending the hearing of the suit. The balance of convenience tilts in favour of the Defendant considering that the court cannot, on the evidence before it, determine if the Plaintiff has established a prima facie case or not or if he is likely to suffer irreparable damage.
11. For those reasons I allow the Plaintiff's Application dated 14th March, 2014 with no orders as to costs.

Dated and delivered in Malindi this **19th** day of **June**, 2015.

O. A. Angote

Judge