



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO.104 OF 2013**

**ABDULRAZAK MUHSIN SHERIFF.....PLAINTIFFS/APPLICANT**

**=VERSUS=**

**1. KADZO MASHA KAZUNGU**

**2. MORRIS MULEWA.....DEFENDANTS/APPLICANTS**

**R U L I N G**

1. The Application by the Plaintiff is he one dated 21<sup>st</sup> June 2013 seeking for the following orders:

**(a) THAT pending the hearing and determination of this Application, a temporary injunction does issue against the Defendants either by themselves, servants, agents, employees, legal representatives or any other person claiming interest through them from planting or cultivating, trespassing, entering, remaining, selling, alienating or dealing with the suit property in any manner whatsoever and to cease any or any further construction or undertaking any development or otherwise upon the Plaintiffs' portion of land known as Plot No.9313, situated in Malindi constituency within Kilifi county pending the hearing and determination of this Application interpartes.**

**(b) THAT pending the hearing and determination of this suit, an injunction do issue against the defendants either by themselves, servants, agents, employees, legal representatives or any other person claiming interest through them from planting or cultivating, trespassing, entering, remaining, selling, alienating, or dealing with the suit property in any manner whatsoever and to cease any or any further construction or undertaking any development or otherwise upon the Plaintiff's portion of land known as PLOT NO.9313, situated at Malindi Constituency within Kilifi County.**

2. The Application is premised on the ground that the Plaintiff is the allottee from the Government of Kenya of plot number 9313 Malindi.

3. In support of the Application, the Plaintiff has annexed on the Supporting Affidavit the letter of allotment which was issued to him dated 4<sup>th</sup> August 1994 and a receipt showing the payment he made to the Government.

4. The Plaintiff has also annexed the Deed Plan for portion number 9313 that was approved by the Director of Surveys on 6<sup>th</sup> December 2012.

5. In her Replying Affidavit the 1<sup>st</sup> Defendant denied having trespassed on the suit property.

6. In his submissions dated 28<sup>th</sup> July 2015, the Defendants' advocate submitted that considering the age of the Application, and considering that the Respondents' building on the suit property was demolished at an interlocutory stage, the status quo should be maintained until the suit is heard and determined.

7. In view of the fact that the Respondents have not shown their proprietary interest on the suit property,

and having perused the letter of allotment that was issued to the Plaintiff and the Deed Plan, I find and hold that the Plaintiff has established a prima facie case with chances of success.

8. The Plaintiff is also likely to suffer irreparable damage that cannot be compensated if the Defendants are allowed to deal with the suit property before the hearing of the suit, as they have attempted to do before by putting up structures in the land.

9. For those reasons, I allow the Application dated 21<sup>st</sup> June 2013 as prayed.

Dated and delivered in Malindi this **2<sup>nd</sup>** day of **October** 2015.

**O. A. Angote**

**Judge**