



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

**AT MALINDI**

**LAND CASE NO. 136 OF 2013**

**COSMUS MWANGUDAZA.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**EMMANUEL MENZA THUVA.....DEFENDANT/RESPONDENT**

**R U L I N G**

**Introduction**

1. The Plaintiff filed the Plaint and the Application dated 8<sup>th</sup> August 2013 in person. The Application is seeking for the following orders:
  - a. **THAT pending the hearing and determination of this application inter partes, this Honourable court be pleased to issue an order for temporary injunction restraining the Defendant either by himself, servant/agents from trespassing or in any manner whatsoever interfering with the plot no. M3/985 until the determination of this Application.**
  - b. **That pending the hearing and determination of this application inter parted, this Honourable Court be pleased to issue an order for eviction against the Defendant herein who has refused neglected and or ignored to vacate and or stop the construction of the house on plot number M 3/ 985 despite notices given to him.**
    - (b) **THAT this Honourable Court be pleased to issue and order for demolition of the structure on Plot no. M3/985 build on my plot without my consent.**
    - (c) **THAT this Honourable Court do make such further or such order as it deem appropriate in all circumstances**
    - (d) **THAT the costs of this Application be provided for.**
2. According to the Plaintiff's depositions, he is the registered owner of the suit property and the Defendant has refused, ignored and neglected his notices to vacate the suit property.
3. The Defendant filed a Replying Affidavit on 19<sup>th</sup> September 2013 and deponed that he purchased the suit property in the year 2006 from Sidi Kai Chiluma for Kshs.70,000; that he has since transferred the property to Justus Charo and that he does not stay on the suit property. The Defendant finally deponed that he has no claim over the land and that he has been wrongly sued.
4. The parties appeared before me on 4<sup>th</sup> December 2013 and made oral submissions which I have considered.

5. The Plaintiff has annexed on his Application the proceedings of “Kilio cha Umoja Mwanashungi Self Help Group” which attempted to resolve the dispute between the parties. Those proceedings have no evidential value before this court other than to show that the parties attempted to resolve this matter out of court.
6. Although the Plaintiff has deponed that he is the owner of the suit property, he has not annexed any document to demonstrate that allegation.
7. On the other hand, the Defendant has deponed that he sold the suit property in 2012 to a third party and he therefore has no claim over the suit property as alleged by the Plaintiff. The Plaintiff did not respond to this deposition.
8. In view of the absence of any document to show the Plaintiff's proprietary interest in the property, and considering the assertions by the Defendant that he has since sold to a third party the suit property, I find that the Plaintiff has not shown that he has a prima facie case with chances of success. The Plaintiff has also not shown the irreparable loss that he will suffer that cannot be compensated by way of damages in the event the injunctive order is not granted.
9. For the reasons I have given above, I dismiss the Plaintiff's Application dated 8<sup>th</sup> August 2013 with costs.

Dated and Delivered in Malindi this 25<sup>th</sup> Day of **February**, 2014.

**O. A. Angote**

**Judge**