



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

**AT MALINDI**

**LAND CASE NO. 86 OF 2013**

**PATRICK KHADONDI.....PLAINTIFF/RESPONDENT**

**=VERSUS=**

**JAPHET NOTI CHARO.....DEFENDANT/APPLICANT**

**R U L I N G**

**Introduction**

1. The Defendant's Application is the one dated 13<sup>th</sup> November 2013 seeking for the following orders:
  - (a) **That pending the hearing and determination of this Application inter-partes, the Plaintiff/Respondent be restrained from demolishing and/or doing any alterations of any manner to the suit property.**
  - (b) **THAT the Plaintiff/Respondent be ordered to furnish security to a sum of Kshs.1,000,000 during the active pendency of the injunction issued on the 18<sup>th</sup> day of October 2013.**
  - (c) **THAT upon inter partes hearing, the court be pleased to grant prayer 2 and 3 above pending the hearing and determination of this suit.**
2. The Application is premised on the ground that the Plaintiff/Respondent is using the injunctive orders of 18<sup>th</sup> October 2013 to demolish the structure on the suit property; that the court was silent on the issue of security and that the Defendant has been exposed to great loss and damages.
3. The Plaintiff/Respondent filed a Replying Affidavit on 25<sup>th</sup> November 2013 and deposed that he just carried out simple renovations of the house on the suit property as the building was destroyed by either the Defendant/Applicant or his agents when he was evicted; that the investments erected on the suit property have never been owned by the Defendant/Applicant and that the Defendant's documents are forgeries.
4. It is the Plaintiff/Respondent's deposition that unless the suit premise is renovated, it is inhabitable and it is the Applicant's act of vandalism which has made the repairs necessary.

**Analysis and Findings**

5. On 18<sup>th</sup> October 2013, I delivered a Ruling in respect to the Plaintiff's/Respondent's Application dated 29<sup>th</sup> May 2013. In the Ruling, I allowed Plaintiff's Application in the following terms.

**(a) Interim injunction orders do, and are hereby issued against the Defendant restraining him, his agents, servants or anyone whomsoever acting under him from remaining, entering or trespassing into the Plaintiff's plot and property developed on the land known as plot number 9 denoted on development plan number 150 pending hearing and determination of the suit.**

**(b) The OCS, Malindi to assist in the implementation of this order.**

**(d) The Defendant to pay the Plaintiff the costs of this Application.**

6. The Defendant now wants me to make an order restraining the Plaintiff from demolishing or doing any alterations of any manner to the suit property.

7. This particular prayer, in my view, is an order of injunction. An order of injunction, in whatever form, cannot be granted without a substantive prayer either in the Plaint or Counterclaim, and the well established principles proved.

8. The Defendant/Applicant has not filed a Counterclaim or cross-suit to warrant this court to grant him the injunctive orders that he is praying for in the current Application. In the circumstances, I decline to grant to the Applicant the order of injunction as prayed.

9. The Defendant/Applicant has also prayed that an order do issue directing the Plaintiff/Respondent to furnish security of a sum of Kshs.1,000,000 during the pendency of the injunction.

10. Order 40 Rule 2(2) of the Civil Procedure Rules provides that the court may grant an injunction on such terms, including the giving of security.

11. The issue of giving security must be argued during the hearing of the Application of injunction. The court has the discretion to order for security after the arguments.

12. The Defendant/Applicant did not raise the issue of security when the Application for injunction was argued before me. Even if the issue was argued, the court had the discretion to order for security or not and consequently the Defendant cannot raise the issue thereafter as he has done.

13. The Defendant/Applicant has filed a Notice of Appeal in respect of my Ruling. In my view, the issues raised in the current Application should be ventilated in the said appeal and not in a separate Application.

14. For the reasons I have given above, I dismiss the Defendant's/Applicant's Application dated 13th November 2013 with costs.

Dated and Delivered in Malindi this 21<sup>st</sup> Day of **March 2014**

**O. A. Angote**

**Judge**