



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

**AT MALINDI**

**LAND CASE NO. 215 OF 2013**

**DANIEL NGUMBAO.....APPLICANT**

**VERSUS**

1. **KARISA KAKA**
2. **BAHATI KAKA**
3. **HASSAN KAKA**
4. **KATANA KAKA**
5. **HARUSI KAKA**
6. **MGANGA KAKA**
7. **DHAHABU KAKA**
8. **JUMA MWAHUNGA**

**9. HAWE SIDI KAKA.....DEFENDANTS**

**R U L I N G**

1. What is before me in the Plaintiff's Application dated 29th November 2013 seeking for the following orders:
  - a) Pending the hearing and determination of this suit, an injunction do issue restraining the defendants whether by themselves, their children, servants, employees or agents or any others claiming through them from entering, alienating or in any manner whatsoever interfering with the plaintiff's enjoyment of his portion of land which is part of plot No. 354 MALINDI including erecting any structures thereon or cutting any flora and fauna.
  - b) The costs of this application be awarded to the plaintiff.
2. The Application is supported by the Plaintiff's Affidavit in which he has deponed that he is the beneficial owner of the suit property, that the Defendants are his neighbours and that in 11th November 2013, the Defendants invaded a portion of his land measuring 20 acres.
3. It is the Plaintiff's deposition that the chief of the area heard the dispute between the parties and delivered his Ruling in his favour.
4. According to the Defendant's, the Plaintiff and their deceased grandfather were friends and neighbours, that their father allowed the Plaintiff to cultivate tobacco on a small portion of their plot and that their grandfather later on stopped the Plaintiff from utilizing the small portion of land.
5. The Defendants admitted that indeed the Assistant Chief visited the disputed plot and ruled in favour of their father.
6. The parties advocates filed their respective submissions in which they reiterated their client's

- cases. I have considered those submissions and have taken the following view:
7. None of the parties have a title to their respective portions of land. It would appear that the two families have been residing on the land whose beacons have never been fixed.
  8. The Applicant has annexed on his Affidavit the proceedings in respect of the disputed land that were conducted by the Chief in the presence of the village elders and the Senior Assistant Chief. There were other 18 people, including the parties herein in attendance.
  9. After visiting the site, the Chief identified the disputes parcel of land and drew a sketch which forms part of the proceedings. The Chief, and the elders, after hearing both sides concluded that the boundary between the two parties is what is represented by a line he marked as AB. The chief directed that the parties should respect the boundary as established by himself and village elders.
  10. The Respondents annexed a report of the Assistant Chief. The said report not dated. The Assistant, without setting out how he resolved the dispute or without a diagram to show where the boundary of the parties should be concluded that the disputed plot belonged to the Defendants.
  11. Article 159 (2) (c) of the Constitution mandates this court to be guided by the principles of alternative forms of dispute resolution including traditional dispute resolution mechanisms. The Chief of the area with which the disputed land falls arbitrated over the dispute with the assistance of village elders. The Chief visited the land and drew a sketch showing where the boundary between the two parties should be. That, in my view, should be the status quo considering that the court cannot establish the boundary at this stage.
  12. In the circumstances, I shall allow the plaintiff's Application dated 29th November, 2013.

Dated and Delivered in Malindi this **31<sup>st</sup>** day of **July**, 2014.

**O. A. Angote**

**Judge**