



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

**AT MALINDI**

**LAND CASE NO. 159 OF 2012**

**DAMA LEWA PEPO.....1<sup>ST</sup> PALINTIFF**

**KALAMA LEWA PEPO .....2<sup>ND</sup> PLAINTIFF**

**=VERSUS=**

**SAID MBOKOMO.....DEFENDANT**

**R U L I N G**

1. The Notice of Motion before me is the one dated 18<sup>th</sup> September, 2012 seeking for the following orders;-

**(a) That this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendant and/or his agents and/or his employees and/or his servants or any other person(s) acting on the Defendant's behalf from entering and/or invading and/or erecting any structures(s) on Plot No. KILIFI/MTWAPA/803 or evicting the Plaintiffs and their families from the suit premises and/or dealing with the suit property in any manner, whatsoever detrimental to the rights and interest of the Plaintiffs/Applicants herein pending the hearing and determination of this application.**

**(b) THAT this Honourable Court be pleased to issue a mandatory injunction directing the Defendant to stop any developments on the parcel of land being Plot No. KILIFI/MTWAPA/803.**

2. The Application is premised on the grounds that the Plaintiffs are the lawful administrators of the Estate of the late Lewa Pepo Masuku who was the owner of the suit property and that on 19<sup>th</sup> July, 2012, the Defendant entered the suit premises and started developing it.
3. In reply, the Defendant stated that the late Antony Charo Mzee purchased the suit property from the late Lewa Pepo Masuku by an agreement dated 7<sup>th</sup> August, 1989 and fully paid the purchase price of Ksh.144,000; that the seller passed on before the transfer could be effected and that his late brother and his family commenced immediate occupation of the property upon signing the agreement in 1989.
4. The Defendant deponed that it is his late brother who purchased the suit property and that his father Patrick Mbokomo is currently the legal representative of the Estate of his late brother; that he has been wrongly sued and that the consent by the Land Control Board to transfer the suit property to the late Anthony Chari Mzee was duly given.
5. In the Supplementary Affidavit, the Plaintiff deponed that he was not author of the alleged sale

agreement of 7<sup>th</sup> August 1989 and that no attempts were made to complete the purported transaction.

**Analysis and findings:**

6. It is not in dispute that the late Lewa Pepo was allocated parcel of land number Kilifi/Mtwapa/507 which later changed to number 803 by the Settlement Fund Trustees. The Discharge of charge was duly signed by the SFT and a transfer of the suit property was effected in favour of the late Lewa Pepo way after his demise.
7. The Defendant's claim is that the suit property was bought by his late brother from the late Lewa Pepo on 7<sup>th</sup> August, 1989. A sale agreement was annexed on the Replying Affidavit. According to the said agreement, the Defendant's late brother bought 6 acres out of the 12 acres. It is the Respondent's contention that his late brother and his family took possession of the 6 acres immediately after the signing of the agreement. Unfortunately, his brother and wife have since died.
8. It was the averment of the Defendant that his late brother built a big home and planted mango trees, amongst other trees, on the suit property. The Defendant annexed photographs showing the house and the trees.
9. It may be true that the Plaintiffs are not aware of the agreement that was entered into between the late Lewa Pepo and the Defendant's late brother. That is an issue that can only be determined after full trial. However I am convinced that by the time the suit was filed by the Plaintiff, the Defendant or the Defendant's late brother's family was already in occupation of the 6 acres that was purportedly purchased.
10. The court cannot therefore at this stage order for the eviction of the Defendant, or the legal representative of the Defendant's late brother from a portion of the suit property until the issue of whether the Defendant's late brother validly purchased a portion of thereof or not is determined at trial.
11. Although I am unable, at this stage, to find whether the Plaintiff has or has not established a prima facie case with chances of success, and whether he is likely to suffer irreparable damage that cannot be compensated by way of damages, I am convinced that the balance of convenience tilts in favour of the Defendant and his late brother's family.
12. For the reasons I have given above, I dismiss the Plaintiff's Application dated 18<sup>th</sup> September, 2012 with costs.

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

**O. A. Angote**

**Judge**