



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

**AT MALINDI**

**LAND CASE NO. 239 OF 2013**

**CHARO BINDO KAMOTSO.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**GARAMA HALUI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**KATANA HALUI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**CHARO HALUI.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**SHIDA HALUI.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**SAFARI HALUI.....5<sup>TH</sup> DEFENDANT/RESPONDENT**

**KAZUNGU HALUI.....6<sup>TH</sup> DEFENDANT/RESPONDENT**

**KAHINDI BIGUGU.....7<sup>TH</sup> DEFENDANT/RESPONDENT**

**R U L I N G**

**Introduction**

1. The Notice of Motion before me is the one dated 20<sup>th</sup> December, 2012 seeking for the following orders;-

- a. **That this Honourable Court be pleased to issue an injunction restraining the defendants whether by themselves, their children, servants, employees or agents or any other 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. 446 MALINDI including erecting any structures thereon or cutting any flora or fauna.**
- b. **That this Honourable Court do award costs to the Plaintiff.**
- c. The Application is premised on the ground that the Applicant is the beneficial owner of the suit property and that the Defendants are seeking to take over the property by violence.

**The Plaintiff's/ Applicant's case:**

2. According to the Plaintiff's Affidavit, he is the beneficial owner of 18 acres of land on Plot Number

446 Malindi at Mumangani where he is a neighbour to the Defendant's family; that it is the Defendant's grandfather, Mr. Bigugu, who sold to him the land he is occupying for Ksh. 600 and that he has planted cashew nut trees, mango trees and mikilifi all around his property and that in mid 2012, Katana Halui encroached on his land and the matter was reported to the Chief and the District Officer. The Plaintiff also reported to the police about the damage that had been visited on his property.

### **The Defendants' case**

3. The 2<sup>nd</sup> Defendant swore an affidavit on his behalf and on behalf of the other Defendants who are his brothers.

4. It was the 2<sup>nd</sup> Defendant's deposition that their land and the one occupied by the Plaintiff does not amount to 18 acres; that the Plaintiff was allowed to occupy part of their grandfather's land which was 8 acres and that it is the Plaintiff who is interfering with the boundary.

5. It is the 2<sup>nd</sup> Defendant's deposition that the Plaintiff has refused to attend to the meetings called by the chief to resolve the boundary dispute herein and that the District officer, at one point, ordered the Chief to make a ground report.

5. The parties' advocates filed their respective submissions which I have considered.

### **Analysis and findings:**

6. Both the Plaintiff and the Defendants are squatters on the suit property. None of the parties have title documents over the portions of land that they are occupying.

7. The dispute between the two parties involves the extent of each other's boundary. Indeed, the Chief of the area at one point heard the dispute whose outcome has been annexed on the Replying Affidavit.

8. Article 159 (2) (c) of the Constitution mandates this court to encourage Alternative Dispute Resolution mechanism.

8. In view of the divergent views on who between the two parties has been moving the boundary, and considering that this court has not heard viva voce evidence, I can only rely on the minutes of 15<sup>th</sup> October, 2013 signed by the Chief of that area, and the decision of the Chief in those minutes, in ordering for the status quo to be maintained.

9. The minutes of 15<sup>th</sup> October, 2013 shows that forty (40) people attended the meeting which attempted to resolve the dispute between the Plaintiff and the Defendants. After hearing the witnesses, the Chief concluded that Samuel Chea Thoya should respect the decision that was made by his late grandfather, Mr. Bigugu, of settling the Plaintiff on the land he occupies. The Chief further stated that the "Bigugu" plot should be divided into two equal parts from the northern road to the southern side with the Plaintiff occupying the western side of the said plot.

10. The decision of the Chief, in my view, represents the *status quo* that should be maintained pending the hearing of the suit considering that the court cannot determine the position of the boundaries with clarity at this particular stage.

11. In the circumstances, and for the reasons I have given above, I direct that the *status quo* as directed by the Chief on 15<sup>th</sup> October, 2013 in respect of the suit property should be maintained pending the hearing of the suit, that is, the Plaintiff to occupy the western side of the "Bigugu" plot from the northern road to the southern side.

12. Each party shall bear his own costs.

Dated and delivered in Malindi this 25<sup>th</sup> day of **July**, 2014.

**O. A. Angote**

**Judge**