



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

**AT MALINDI**

**LAND CASE NO. 46 OF 2014**

**ABDALLA JUMA SALIM (suing for and on behalf of**

**MBARAK JUMA SALIM).....PLAINTIFF**

**=VERSUS=**

**CHARO MWAJE.....DEFENDANT**

**R U L I N G**

**Introduction:**

1. The Application before me is the one dated 13<sup>th</sup> March, 2014 filed pursuant to the provisions of Order 40 Rules 1 (a), 2(1) and 3(1) of the Civil Procedure Rules seeking for the following order:

**THAT pending hearing and determination of the main suit, the Respondent, his servants, agents, employees and/or any other person acting on his behalf be restrained from constructing, alienating, trespassing, encroaching and/or interfering in any manner with plot No. 18 situated at Mambrui measuring approximately 6.9 acres.**

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

2. The Plaintiff has deponed that the he purchased the suit property from the Saida Hassan Nassor on 21<sup>st</sup> August 1990 and paid the entire purchase price. The Plaintiff then took possession of the suit property and enjoyed quiet possession.
3. It is the Plaintiff's deposition that he engaged the services of the District Surveyor who established the boundaries of the suit property; that the was issued with a beacon certificate of plot number 18 situated at Mambrui by the District Surveyor and that the Respondent has trespassed on the land.

**The Defendant's/Respondent's case:**

4. In his Replying Affidavit, the Defendant deponed that he bought the suit property in the year 2008 being a portion measuring 26 meters by 58 meters and took possession.
5. It is the Defendant's case that the Plaintiff watched him construct his houses on the suit property and that the suit property was sold to him by the family of Kaingu Kadenge Tsuwi who were the real owners of the suit property; that he is residing on the suit property and that the family of Kaingu Kadenge Tsuwi who sold it to him had fully developed the suit property.

### **Submissions:**

6. The Plaintiff's advocate filed his written submissions. Counsel submitted that the alleged contract between the Defendant and Kaingu Kadenge Tsuwi is unenforceable since it has not properly described the property that he is occupying and that the Plaintiff has established the principles for the grant of injunction orders.
7. The Defendant's/Respondent's counsel did not file any submissions.

### **Analysis and findings:**

8. Both the Plaintiff and the Defendant claim to be in possession of the suit property. The Plaintiff has acknowledged that the Defendant has put up some houses on the suit property. The Plaintiff did not annex on the supporting affidavit any photograph to show that he is in actual occupation of the suit property.
9. In the absence of the evidence to show the proprietary interest of the person who sold the suit property to the Plaintiff, I am unable to determine whether the Plaintiff has established a *prima facie* case *viz-a-viz* the Defendant's claim or not. I am also unable to ascertain if the Plaintiff will suffer irreparable damage incapable of compensation in view of the fact that he is not in occupation.
10. Being doubtful about the first two principles that the Applicant must establish to be granted an injunction and considering that the Defendant has built his houses on a portion of the suit property, I will not grant to the Applicant the Injunctive order he has sought.
11. In the interest of justice, the proper order for me to make is for the *status quo* prevailing now to be maintained pending the hearing of the suit.

Dated and delivered in Malindi this 4<sup>th</sup> day of **July**, 2014.

**O. A. Angote**

**Judge**