



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

**AT MALINDI**

**ELC CIVIL CASE NO. 141 OF 2013**

**AHMED OBO.....PLAINTIFF/RESPONDENT**

**=VERSUS=**

**KENYA AIRPORTS AUTHORITY.....DEFENDANT/APPLICANT**

**R U L I N G**

**Introduction:**

1. What is before me is the Defendant's Application dated 25<sup>th</sup> April 2014 seeking for the following order:

(a) **THAT this Honourable Court be pleased to dismiss and/or strike out the Plaintiff's suit as it does not disclose any reasonable cause of action against the Defendant/Applicant herein.**

(b) **THAT the cost of this Application and that of the main suit be paid for by the Plaintiff.**

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

2. The Defendant's Application is premised on the grounds that it the legal and registered owner of the suit property measuring 194 hectares; that the Plaintiff's claim is based on the fact that the Government issued him with a letter of allotment over plot "A" Manda on 24<sup>th</sup> September 1998 and that a letter of allotment is only an offer made to a person to whom it is addressed on conditions contained therein.

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

3. According to the Plaintiff's Replying Affidavit, the Defendant illegally attempted to extend the boundaries of its parcel of land without following due process after it sought the consent of the Lamu County Council vide minutes dated 27<sup>th</sup> April 2005.

4. According to the Plaintiff/Respondent, an independent surveyor will have to be appointed to ascertain the boundaries of the Defendant's land and that the Application does not meet the legal threshold required for granting the orders sought.

**The Defendant's/Applicant's submissions:**

5. The Defendant's/Applicant's advocate submitted that the Plaintiff's claim is the letter of allotment dated 24<sup>th</sup> September 1998; that the Plaintiff has not demonstrated in his pleadings that he complied with the said letter of offer and that the Defendant has a title to plot no. 21 Manda Island measuring 194 ha. Counsel relied on the case of **Michael Kamau Vs City Council of Nairobi & Another (2013) e KLR** in which the court held that a letter of allotment is not a title to property.

**The Plaintiff's/Respondent's submissions:**

6. The Plaintiff's advocate submitted that the assumption being made by the Defendant is that the Plaintiff is occupying plot number 21, Manda Island; that there is no proof that the Plaintiff is in occupation of the Defendant's land and that there are contentious issues that can only be dealt with at the hearing of the suit.
7. Counsel relied on several authorities on the law relating to striking out of pleadings which I have considered.

**Analysis and findings:**

8. According to the Plaintiff's averments in the Plaint, he was allocated land known as plot number "A" Manda Island in the year 1998 by the government and that he has been enjoying quiet possession and user of the land for more than 15 years.
9. The Plaintiff has further averred that in the year 2012, the Defendant started trespassing on his land and that it has attempted to forcefully fence off his land. The Plaintiff is seeking for a permanent injunction restraining the Defendant from trespassing on land known as "A" Manda Island.
10. In the Defence, the Defendant has stated that it is the legal and registered owner of land known as portion number 21 measuring 194 ha. However, what is not clear at this stage is whether the land which the Plaintiff has averred that it was allocated to him is within plot 21 or not.
11. According to the Affidavit by the Plaintiff, the Defendant's intention to expand the airport will consume his parcel of land.
12. It is not in the province of this court at this stage to scrutinize documents filed in this court and not produced as exhibits to determine if indeed the Plaintiff is within the Defendant's land known as plot number 21 measuring 194.0 ha or not. That is a process that this court can only undertake after hearing viva voce evidence and after all the relevant documents have been produced as exhibits.
13. Whether the Plaintiff met or did not meet the conditions in the letter of offer dated 24<sup>th</sup> September 1998, and the consequences thereof, can only be determined after full trial.
14. The fact that I dismissed the Plaintiff's Application for injunction cannot in itself be an indication that the Plaintiff's claim is so weak that it is beyond redemption and incurable by amendment. In fact, in my Ruling of 1<sup>st</sup> November 2013, I held that the ultimate organization that can determine whether the disputed piece of land which is Government land should be allocated to the Plaintiff or the Defendant is the National Land Commission.
15. In view of the fact the Plaintiff raises triable issues, I decline to strike out the Plaintiff's suit. The Defendant's Application dated 25<sup>th</sup> April 2014 is hereby dismissed with costs.

Dated and delivered in Malindi this 7<sup>th</sup> day of **November**, 2014.

**O. A. Angote**

**Judge**