



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

**AT MALINDI**

**ELC CIVIL CASE NO. 143 OF 2014**

**JAPHET NOTI CHARO.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**MOHAMED AHMED DAHMAN.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**ABDALLA SALIM.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**R U L I N G**

**Introduction:**

1. Before me is the Application filed by the Plaintiff dated 28<sup>th</sup> July, 2014 in which he is seeking for the following orders:

(a) That a warrant of arrest be issued against the 2<sup>nd</sup> Defendant/Respondent **ABDALLA SALIM** to be arrested and be brought before this Honourable Court to show cause why he should not be detained in prison for a term not exceeding six months for disobedience of court order issued on the 27<sup>th</sup> August 2013 in the instant court.

(b) THAT OCS Malindi to ensure compliance of all orders issued herein including the order of injunction issued on the 25<sup>th</sup> day of July 2014.

(c) THAT in the event of the Court granting order NO. 2 above the officer commanding station Malindi to avail security during the said arrest.

(d) THAT an order of demolition be issued to demolish the offending perimeter wall build after service of the orders of the 25<sup>th</sup> day of July, 2014.

(e) THAT costs for this application be provided for.

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

2. The Plaintiff has deponed that this court issued orders on 25<sup>th</sup> July 2014 for fourteen days restraining the Defendants from entering into, trespassing, construction or dealing with land known as plot M5 Malindi and any sub-division thereon including portion number 5596.

3. It is the Plaintiff's case that the 2<sup>nd</sup> Defendant was served with the orders of the court on 25<sup>th</sup> July 2014 and that at the time of filing the suit, the Defendant had only started bringing building materials on the suit property.

4. The Plaintiff has deponed that after being served with the order of 25<sup>th</sup> July 2014, the 2<sup>nd</sup> Defendant employed more men who continued working even harder and faster. Consequently, it was deponed, the 2<sup>nd</sup> Defendant is in breach of the order of the court and should be committed to civil jail.

**The 2<sup>nd</sup> Defendant's case:**

5. In response, the 2<sup>nd</sup> Defendant deposed that the orders of 24<sup>th</sup> July, 2014 were served upon Abdalla Mohamed Ahmed Abdulrahman and that he became aware of the said orders on 4<sup>th</sup> August 2011 from his cousin, Mtwahar Ahmed Dahman.

6. The 2<sup>nd</sup> Defendant deponed that there is no known person in his family known as Abdalla Said Omar Barkar; that he does not own any plot within M5 Malindi and that the alleged construction is on portion number 12042 and 12041 and not on portion number 5596.

**Submissions:**

7. The parties' advocets filed their respective submissions which I have considered. The said submissions have not raised anything different from what has been deponed in the affidavits.

**Analysis and findings:**

8. The Plaintiff's case is that the 2<sup>nd</sup> Defendant has disobeyed the orders of this court dated 24<sup>th</sup> July 2014 and issued on the same day restraining the Defendant from dealing in any manner whatsoever with the land known as portion number 5596 Malindi.

9. The 2<sup>nd</sup> Defendant has denied that he was served with the order of the court on 25<sup>th</sup> July, 2014 as alleged by the Plaintiff.

10. I have perused the file and I have not come across an affidavit of service showing that the 2<sup>nd</sup> Defendant was personally served with the order of the court on 25<sup>th</sup> July, 2014 as alleged by the Plaintiff. The person who is alleged to have been served with the said order is Abdalla Said Omar Bakor.

11. The Plaintiff has annexed on his Supporting Affidavit photographs showing some ongoing constructions. The photographs were taken on 25<sup>th</sup> July 2014 by someone who is not mentioned in the affidavit.

12. It is not clear to this court whether the construction seen in the photographs annexed on the Supporting Affidavit was on the suit property or on a different parcel of land all together.

13. The photographs annexed on the further affidavit do not also show on which parcel of land the so called completed building stands on.

14. In a nutshell, the Plaintiff has not satisfied this court that the 2<sup>nd</sup> Defendant was served with the order of 24<sup>th</sup> July, 2014. The Plaintiff has also not satisfied me that the 2<sup>nd</sup> Defendant continued with the construction on portion number 5596 after this court issued its order on 24<sup>th</sup> July, 2014.

15. For those reasons, I dismiss the Plaintiff's Application dated 28<sup>th</sup> July, 2014 with costs to the

2<sup>nd</sup> Defendant.

Dated and delivered in Malindi this 21<sup>st</sup> day of **November**, 2014.

**O. A. Angote**

**Judge**