



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

**AT MALINDI**

**LAND CASE NO. 86 OF 2013**

**PATRICK KHADODI.....PLAINTIFF**

**=VERSUS=**

**JAPHET NOTI CHARO.....DEFENDANTS**

**R U L I N G**

**Introduction**

1. Before me are two Applications. The Plaintiff's Application is dated 29<sup>th</sup> May 2013 while the Defendant's Application is dated 11<sup>th</sup> June 2013.
2. The Plaintiff's Application is seeking for injunctive orders restraining the Defendant from dealing with plot number 9 pending the hearing and determination of the suit while the Defendant's Application seeks to have the ex-parte orders issued on 29<sup>th</sup> May 2013 set aside. In my view, the Defendant's Application is superfluous considering that the ex-parte orders that were granted by this court on 29<sup>th</sup> May, 2013 are still in force. Those re the orders that the Plaintiff is seeking to confirm by way of his Application dated 29<sup>th</sup> May, 2013.

**The Plaintiff's case**

3. The Application dated 29<sup>th</sup> May 2013 is supported by the Affidavit of the Plaintiff who has deponed that he is the legal and beneficial owner of the unsurveyed plot no. 9 identified in development plan number 150 which was allocated to him under the auspice of Sabaki squatters upgrading.
4. It is the Plaintiff's deposition that he has been in full and undisrupted possession, occupation and utilization of the suit land since 1993 to date having been allocated the same by the Municipal Council of Malindi; that sometimes in the year 2010, he made an Application to the Commissioner of Lands for change of user of the plot from commercial use in form of a bar and restaurant to the construction of a church when it was discovered that the land had been allocated to someone else in the name of S.K. Kenga.
5. It is the Plaintiff's case that after the intervention of the Municipal Council of Malindi, it was agreed that S.K. Kenga transfers his rights as the allottee of the plot by to him; that by consent signed by the said S.K. Kenga and himself dated 12<sup>th</sup> January 2011, the said Kenga transferred his interests to him and that he undertook tremendous developments on the parcel of land by raising commercial cum dwelling house on the land.
6. The Plaintiff finally deponed that on 3<sup>rd</sup> March 2013, the Respondent violently entered the land

- and purported to evict the tenants who were staying in the house on the land; that the Respondent broke into his house and removed the household items which led to the Respondent being charged in Criminal case number 213 of 2013.
7. The Defendant filed a Replying Affidavit on 11<sup>th</sup> June 2013 and deponed that he is the registered owner of the suit property; that on or about 7<sup>th</sup> December 2012, he issued a notice to the Plaintiff/Respondent requiring vacant possession and that in obedience of the said notice, the Plaintiff vacated the premises leaving a few items which he requested the village elder to collect in fear that they could be stolen and that after a few days, the Plaintiff went back and started making wild allegations in respect to the suit premises.
  8. The Defendant finally deponed that he has handed over the suit property to another tenant who has taken possession, a fact well within the knowledge of the Plaintiff and that the Plaintiff has failed to disclose the fact that there exists another suit being Malindi HCCC No. 38 of 2013 filed on 1<sup>st</sup> March 2013.
  9. In response to the Defendant's Replying Affidavit, the Plaintiff filed two Further Affidavits on 13<sup>th</sup> June 2013 and 15<sup>th</sup> July 2013. The Defendant filed a Further Replying Affidavit on 31<sup>st</sup> July 2013.
  10. In the Further Affidavits, the Plaintiff deponed that the Replying Affidavit is full of falsehoods and the annexed documents are forgeries intended to mislead the court to arrive at the wrong decision.
  11. According to the Plaintiff, upon being served with the Replying Affidavit and the annexures, he carried out a personal search and paid for the print out of the Deed Plan number 401352 using Folio Reference number 334/136 (survey plan); that his findings were that the Deed Plan with F/R No.334/136 is Deed Plan number 219322 and Not 401352 which actually refers to portion of land number 10712 and not L.R.NO.14034 and that there is no Deed Plan number 401352 at the Survey of Kenya.
  12. The Plaintiff has further deponed that when he presented the Plaintiff's Title document at lands office, the officers checked the records and were unable to trace the file in respect to the title document; that L.R.No.14034 is a plot in Kajiado and that all the documents which the Defendant is relying on are forgeries.
  13. The Plaintiff finally deponed that the suit property is unsurveyed parcel of land whose reference number is 55/MLD/5/2001 with an a plan number 150 duly approved by the Minister of Lands and Settlement; that he was in the process of carrying out the survey of the suit property when the Defendant unlawfully evicted him from his house and that the Defendant has been charged for his criminal actions.
  14. The Defendant filed a Further Affidavit and stated that the Applicant is not competent to analyse the survey records neither is he competent to make any explanations on the computation numbers and F/R Numbers.
  15. The parties agreed to dispose of the Application by way of written submissions which I have considered.

### **Analysis**

16. The Plaintiff annexed on his Supporting Affidavit the letter dated 26<sup>th</sup> November 2010 stating that unsurveyed plot number 9, Malindi, which, according to the Commissioner of Lands, belonged to one S. K. Kenga.
17. The said S. K. Kenga agreed to transfer the plot to the Plaintiff by way of a consent dated 12<sup>th</sup> January 2011. This consent was confirmed by the Municipal Council of Malindi.
18. The Plaintiff has also annexed on his Further Affidavit a duly signed Part Development Plan number 150 in respect to plot number 9 which he claims to be the suit property.
19. According to the Defendant's Further Replying Affidavit sworn on 23<sup>rd</sup> July 2013, pl