



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 86 OF 2013

PATRIC KHADONDI.....PLAINTIFF/RESPONDENT

=VERSUS=

JAPHET NOTI CHARO.....DEFENDANT/APPLICANT

R U L I N G

1. In the Application dated 9th August, 2016, the Defendant is seeking for the following orders:-

(a) THAT upon interpartes hearing, an injunction be issued restraining the Plaintiff/Respondent by himself, his agents, workmen, servants, legal representatives or anyone claiming interest through him from demolishing, altering, leasing, selling, wasting and/or interfering with the current status of the suit property in any manner whatsoever pending the hearing and determination of the suit.

(b) THAT costs to this application be provided for.

2. The Application is premised on the ground that the suit property belongs to the Defendant/Applicant; that the Plaintiff/Respondent has since started demolishing the suit property and that unless the orders being sought are granted, the suit property will be damaged.

3. The Plaintiff's advocate filed a Notice of Preliminary Objection in which he averred that the Supporting Affidavit of 9th August, 2016 is fatally defective because it has not been signed by the Defendant and that this court is *functus officio* because similar Applications dated 13th November, 2013 and 29th May 2013 were heard and determined.

4. In his Replying Affidavit, the Plaintiff/Respondent deponed that he is the one who is in possession and occupation of the suit land; that this court and the Court of Appeal made a Ruling on a similar Application and that the matter is *res judicata*.

5. The Applicant's counsel did not file submissions. The Respondent's advocate filed submissions and authorities which I have considered.

6. This matter is part heard. The evidence of the Plaintiff, PW1, has been taken.

7. The Defendant is seeking for injunctive orders. The issue that I should determine first is whether this court is functus officio in so far as the Application is concerned.

8. The Plaintiff is in this matter filed an Application dated 29th May, 2013 for an order of injunction restraining the Defendant from dealing with the suit property pending the hearing and determination of the suit. This court allowed the said Application.

9. The Defendant is now seeking for an order of injunction pending the hearing and determination of the suit.

10. The issues raised in the current Application are the same issues that the Defendant raised when he opposed the Plaintiff's Application for injunction.

11. Indeed in my Ruling of 18th October, 2013, I found that the Plaintiff was entitled to an order of injunction because he had established a prima facie case with chances of success.

12. By filing the current Application, the Defendant is seeking to cancel my earlier orders in which I had held that it is the Plaintiff who is entitled to the suit property pending the hearing and determination of the suit.

13. It cannot be correct for the Defendant to seek to reverse the decision of the court in the manner that he is doing. This court, having determined the issue of injunction on 18th October, 2013 cannot revisit that issue unless the Application before it is for review or for setting aside of its orders.

14. For those reasons, I dismiss the Application dated 9th August, 2016 with costs.

Dated, signed and delivered in Malindi this **25th** day of **November**, 2016.

O. A. Angote

Judge



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