



Strasser (Suing as the Legal Representative of the Estate of Sandra Strasser Malaika) v Gambo & 2 others (Environment & Land Case E007 of 2025) [2025] KEELC 1338 (KLR) (19 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1338 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E007 OF 2025
FM NJOROGE, J
MARCH 19, 2025**

BETWEEN

ERIKA STRASSER (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SANDRA STRASSER MALAIKA) PLAINTIFF

AND

KAHONZI NYAMAWI GAMBO 1ST DEFENDANT

JUMA NYAMAWI GAMBO 2ND DEFENDANT

SAFARI NYAMAWI GAMBO 3RD DEFENDANT

RULING

1. The application before this court, dated 6/1/2025, was filed by the Plaintiff. The Plaintiffs sought the following reliefs against the Defendants: -
 - a. That the application be certified as urgent and be heard ex parte in the first instance;
 - b. That pending inter partes hearing of the application a temporary injunction be issued restraining and compelling the defendants by themselves and by their agents from evicting, selling transferring charging leasing alienating or in any way whatsoever interfering with or dealing with the property measuring 2.5 acres extracted from all that land known as Kilifi/Mtwapa/8611;
 - c. That pending inter partes hearing of the application a permanent injunction be issued restraining and compelling the defendants by themselves and by their agents from evicting, selling transferring charging leasing alienating or in any way whatsoever interfering with or dealing with the property measuring 2.5 acres extracted from all that land known as Kilifi/Mtwapa/8611;



- d. That pending inter partes hearing of the present suit a permanent injunction be issued restraining and compelling the defendants by themselves and by their agents from evicting, selling transferring charging leasing alienating or in any way whatsoever interfering with or dealing with the property measuring 2.5 acres extracted from all that land known as Kilifi/Mtwapa/8611;
 - e. That the area police herein OCS Mtwapa police station to enforce the orders of this court;
 - f. That the costs of the application be in the cause.
2. The applicant's case as per the plaint and the affidavit in support of the application is that her daughter Strasser Sandra Malaika, whose estate she administers and who is mother to one son now 16, purchased 2.5 acres of land to be excised from Kilifi/Mtwapa/8611 and paid the purchase price of Kshs 700,000/= to the defendant's father one Mzee Nyamawi Gambo and that she took immediate possession and had been living there peacefully ever since. She however met her demise on the 25th April 2024 in Kenya at Bamburi. Her son still resides on the suit property. Earlier in the year she had received a letter from the defendants' advocates claiming she had encroached on the defendants' land.
 3. The Defendants filed a replying affidavit dated 14th February 2025 sworn by the 3rd defendant with the authority of the rest. They annexed a title deed issued in the year 2023. They deponed that the land is legally theirs and there is no proof that her daughter commenced the process of purchase of 2.5 acres. They averred that there was no sale agreement between her and their late father; that the agreement by the plaintiff is a forgery. They deponed that the applicant's daughter only trespassed onto their land. They also aver in the same breath that there is no sale that can culminate in a completion process; that the daughter never stayed peacefully on the suit land. They acknowledge that she constructed structures on the land but termed them as temporary and hastily constructed without government approval and with an intention to dispossess them. They deny that the deceased daughter lived on the land for more than 20 years or that the son still lives thereon. They aver that he lives with the applicant abroad.

Analysis and determination.

4. Having considered the plaint and the response, and the submissions of the defendants which are the only submissions I have seen in the matter, I find that it is evident that the deceased had some relationship with the owner of the land otherwise she would not have been able to access the 2.5-acre portion now claimed. The exhibited copy of agreement and the fact that the defendants acknowledge that she had constructed structures thereon is sufficient proof of this fact. That the proprietor has no history of complaint to the authorities of the deceased's alleged trespass is indicative of the possibility of some peaceful co-existence between the two. Further I note that the land did not belong to the defendants but to their father and the plaintiff does not claim any purchase from the defendants. In their counterclaim, the defendants state that the plaintiff has encroached on their land and buried the remains of the deceased on that land. The counterclaim also seeks orders of vacant possession and exhumation of the deceased's remains from the said land.
5. It must be remembered that for the reason that they only assumed titled ownership of the entire parcel Kilifi/Mtwapa/8611 in the year 2023, the defendants are speaking from the position of outsiders to the alleged transaction between their father and the deceased, while the plaintiff, standing in the shoes of the deceased is an insider to the information that she gives.
6. Consequently, I find that the plaintiff has established a prima facie case against the defendants. There are present on the suit land the deceased's structures. The court is informed that the son to the deceased,



whom the defendants acknowledge exists, lives there. If that is the case, then he stands to lack shelter in the event that he is evicted or the structures demolished. As a beneficiary to the estate he stands to suffer irreparable loss if he loses his shelter. Consequently, the risk of irreparable loss has been proved.

7. I therefore allow the application dated 6/1/2025 and order as follows:
- a. The prevailing status quo regarding the suit land on Kilifi/Mtwapa/8611 shall be observed by all parties without exception, in that no defendant herein shall interfere with the suit land in any manner and no interference with the title shall be had or registered until the hearing and determination of the suit;
 - b. As the schedule in Order 11 of the CPR is already inconvenienced, the hearing of the present suit shall be expedited and any party found guilty of deliberate delay shall be sanctioned by this court as appropriate including by way of paying costs as the court shall assess;
 - c. The plaintiff is hereby granted 14 days from today within which to file and serve any defence to counterclaim;
 - d. The plaintiff is hereby granted 14 days from today within which to file and serve a consolidated trial bundle, lists, witness statement she may wish to file, duly paginated and indexed;
 - e. The defendants shall within 21 days from today file and serve their consolidated trial bundle, lists, witness statement they may wish to file, duly paginated and indexed and shall include copies of all the pleadings, orders, proceedings and rulings in the Kilifi MCCC E191 OF 2024 without exception;
 - f. All parties shall ensure that their witness statements are drafted with reference and elaboration on their exhibits, with exhibits duly numbered, in such manner that they will simply adopt them at the hearing with minimal or no extra comments and be cross-examined thereon;
 - g. This suit shall be listed for hearing on 26/6/2025;
 - h. There will however be a mention on 29/4/2025 to confirm compliance.

Dated, signed and delivered at Malindi via electronic mail on this 19th day of March 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

