



Mweni (Suing as the Administrator of the Estate of Karisa Mweni - Deceased) & another v Mweni & 3 others (Land Case E127 of 2024) [2025] KEELC 1318 (KLR) (18 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1318 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
LAND CASE E127 OF 2024
FM NJOROGE, J
MARCH 18, 2025**

BETWEEN

KAZUNGU MWENI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF KARISA MWENI- DECEASED) 1ST PLAINTIFF

SIFA BAYA CHENGO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF EDWARD CHENGO KATANA) 2ND PLAINTIFF

AND

SIZA MRAMBA MWENI 1ST DEFENDANT

MAJOMBO MRAMBA MWENI 2ND DEFENDANT

MAITHA MWENI MRAMBA 3RD DEFENDANT

LAND REGISTRAR KILIFI 4TH DEFENDANT

RULING

1. For determination is the application dated 10/12/2024 brought under section 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act* and Order 40 Rule 1,2, and 3 of the *Civil Procedure Rules*. In that application, the Plaintiff is seeking the following orders: -
 - a.Spent;
 - b.Spent;
 - c. That this Honourable court be pleased to issue temporary orders of injunction restraining the defendants, their servants, agents, hirelings or whomsoever from trespassing, sub-dividing, alienating or in any way interfering with the suit property Kaloleni/Vishakani/317 pending the hearing and determination of the suit herein;
 - d. Costs be provided for.



2. In support of the motion are the grounds numbered on its face and the affidavits sworn by the plaintiffs, Kazungu Mweni and Sifa Baya Chengo on 10/12/2024. The Plaintiffs alleged that the land Kaloleni/Vishakani/317 (hereinafter referred to as the suit property) belongs to Masha Mramba, Kambi Mramba, Karisa Mweni, Mramba Mweni and Edward Chengo, all of whom are deceased; that the 1st, 2nd and 3rd Defendants are heirs and beneficiaries of the estate of Mramba Mweni who petitioned for grant of letters administration without informing the Plaintiffs; that the said Defendants obtained ex-parte orders for sub-division of the suit property by failing to disclose that the Respondents therein were deceased. The Plaintiffs averred that the said Defendants have never occupied the suit property since they were all settled on a different parcel of land belonging to their deceased father.
3. The Plaintiffs added that the Defendants have since started cutting trees and even colluded with the 4th Defendant to transfer, by way of transmission, title to the 1st, 2nd and 3rd Defendants, without cancelling the original title held by the Plaintiffs. The Plaintiffs' concern is that if the order sought is not granted, the Defendants shall continue to cause havoc to the suit property and occasion harm to the other beneficiaries in occupation thereof.
4. The 1st, 2nd, and 3rd Defendants opposed the application. They filed a replying affidavit sworn by Siza Mramba Mweni, the 1st Defendant, on 17/1/2025 wherein he deposed that the Defendants filed a dispute at the tribunal in Kaloleni claiming a fifth share of the suit property as part of their inheritance. The dispute was determined in their favour, prompting the Plaintiffs to file Appeal No. 28 Of 2008 which was eventually dismissed; that the Plaintiffs subsequently refused to surrender the title which culminated to a series of summons by the National Land Commission (NLC) and the area chief on different occasions in a bid to resolve the issues, summons which the Plaintiffs ignore; that resultantly, the Defendants proceeded to file a citation compelling the Plaintiffs to take letters of administration; that despite service, the Plaintiffs failed to comply and grant of representation was thus issued; that the court equally ordered that the property be sub-divided and they be given their portion.
5. On 21/1/2025, the Court directed that the application be heard by way of written submissions which were to be filed first by the Plaintiffs within 14 days, period which lapsed earlier this month on 4/2/2025. I have perused the court records; it is evident that those directions were not complied with. In the circumstances, I dismiss the application dated 10/12/2024 for failure to comply with the court's directions.
6. To facilitate the expeditious disposal of this matter I order as follows:
 - a. By the inherent power of the court under section 3A of the *Civil Procedure Act*, it is hereby ordered that the prevailing *status quo* regarding the suit land shall be observed by all parties without exception, in that no person shall interfere with the land in any manner other than that for which it has been used for before the date of this order and no further dealings with the title shall be had or registered until the hearing and determination of the suit;
 - b. 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 plaintiffs are hereby granted 14 days from today within which to file and serve any supplementary trial bundle, lists, witness statement they may wish to file duly paginated and indexed;
 - d. The defendants shall within 28 days from today file and serve their trial bundle lists, witness statement they may wish to file duly paginated and indexed;



- e. 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 with minimal extra comments and be cross-examined thereon;
- f. This suit shall be listed for a mention on 7/4/2025 to ascertain compliance and for issuance of a hearing date.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 18TH DAY OF MARCH 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

