



REPUBLIC OF KENYA



**Mwaringa & another v Tsofa (Environment & Land Case  
E025 of 2023) [2023] KEELC 18792 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18792 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E025 OF 2023**

**EK MAKORI, J**

**JULY 13, 2023**

**BETWEEN**

**HASSAN MWARINGA ..... 1<sup>ST</sup> PLAINTIFF**

**PHILEMON MWARINGA & OTHERS ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**IBRAHIM NYULE TSOFA ..... DEFENDANT**

**RULING**

1. By an application dated April 11, 2023 the applicants seeks among other relief(s):
  - i. Injunctive orders to issue against the defendant from evicting, demolishing the applicants' houses, dispossessing them of their land, and/or interfering with the plaintiffs/applicants' quiet possession of land known as plot No 8861 MN/III situated in Timboni, Kilifi county pending the hearing and determination of this suit.
  - ii. OCS Kijipwa Police Station to assist in compliance.
2. The applicants through one Philemon Mwaringa have filed a replying affidavit detailing their occupation of the parcel of land spanning over 50 years.
3. The application was marked urgent on April 17, 2023 it was ordered for service and fixed for *inter parte* hearing on April 26, 2023.
4. On April 20, 2023 no replies had been filed. The court ordered further service to be done personally on the defendants. The matter was fixed for further hearing on May 4, 2023. No replies had been filed. The court ordered the status quo on the ground to be maintained and the applicants not to be evicted and fixed the same for inter parte hearing on June 5, 2023 with the respondents granted 21 days to reply.



5. On June 5, 2023 the respondent through Amina Advocate said they had filed responses that morning and sought leave to have averments filed admitted. Counsel Khisia for the applicants vehemently opposed the same. The court directed that it was to look at the material placed before it and render a determination.
12. Having considered the material I have before me, the applicants seem to be on the ground. The title document seems to be in the possession of the respondent. To preserve the substratum of the suit that is the land in question claimed by both parties and based on the circumstances I have which do not favour issuance of injunctive orders, under the Environment and Land Court Practice Directions 2014, this court has been granting status quo orders to preserve the subject matter pending the full determination of the suit see for example Onguto J. in *Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others* [2015] eKLR:

“In land matters the maintenance of status quo order is now literally synonymous with the proceedings. As was held by the Court of Appeal in the case of *Mugah v Kunga* [1988] KLR 748, in land matters status quo orders should always be issued for purposes of preserving the subject matter. This court’s practice directions *vide* Gazette Notice No 5178/2014 have followed suit. Practice Direction No 28(k) is relatively clear. It gives the court the leeway and discretion to make an order for the status quo to be maintained until the determination of the case. I however take note that the gazette notice was issued before this court’s July 16<sup>th</sup> 2014 decision.

The end result is that status quo orders will issue not just when the court is prompted by way of formal applications for injunction or conservatory or stay orders: see *Texaco Ltd v Mulbery Ltd* [1972]1 WLR 814, but also when the court is of the view that as a case management strategy, it would be more proportionate and appropriate without prejudicing one party but both, to issue a “status quo” order.”

6. The orders which commend for issuance to me are as follows:
- i. Status quo on land parcel Nos 8861 MN/III Timboni Kilifi to be maintained. That is no eviction of the applicants or demolition of their houses shall be undertaken until the current suit is heard and determined.
  - ii. Costs to the applicants.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 13<sup>TH</sup> DAY OF JULY 2023**

**E.K. MAKORI**

**JUDGE**

**In the presence of:**

**Mr. Khisia for the Plaintiff**

**Ms. Amina holding brief for Mureithi for the Defendants**

**Court Clerk: Happy**

