



REPUBLIC OF KENYA



**Karisa v Juma & 3 others (Environment & Land Case E38 of 2022)
[2023] KEELC 22524 (KLR) (13 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22524 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E38 OF 2022
EK MAKORI, J
DECEMBER 13, 2023**

BETWEEN

LAWRENCE CHARO KARISA PLAINTIFF

AND

JUMA PAMBA JUMA 1ST DEFENDANT

OMAR PAMBA JUMA 2ND DEFENDANT

INUKA AFRICA PROPERTIES LTD 3RD DEFENDANT

REGISTRAR OF LANDS, KILIFI 4TH DEFENDANT

RULING

1. The notice of motion dated May 29, 2023 seeks the following relief(s):
 - i. Spent
 - ii. That this Court be pleased to issue a mandatory injunction compelling the defendants by themselves, their representatives, assigns or any persons claiming title of all that property known as Plot No. Kilifi/Roka/308 pending the hearing and determination of this suit.
 - iii. The costs of this application be provided for.
2. The application is supported by the annexed affidavit of one Lawrence Charo Karisa deponed on May 29, 2023.
3. The application is opposed by significantly the 3rd respondents via a replying affidavit sworn by one Josphat Muchene Marete on September 7, 2023.
4. The Court directed that parties canvass the application by way of written submissions. I did not see any submissions from either of the parties herein at the time of writing this ruling.



5. The applicants averred that a fake order was used to transfer interests in Land Parcel Nos. Kilifi/Roka/308. The said fake order arose from the judgment allegedly issued and delivered by Mukunya J. (as he then was and now deceased) on February 11, 2014 in Mombasa HCC No. 39/1996. There are pronouncements from Munyao J. and Kibunja J. declaring that judgment to be fake and therefore null and void and cannot or could not be used as a basis to effect any transfer of proprietary rights on the suit property.
6. The 3rd defendant alleged that as a land-buying company, it did purchase the suit property at a value of Kshs 10,200,000/- after due diligence and has subdivided the same for purposes of commercial sale and that the Land Registrar at Kilifi has failed to issue titles to the purchasers due to inhibitions placed because of the pendency of court action. The 3rd defendant pleaded the doctrine of an innocent purchaser for value without notice and has sought through a counterclaim for declarations as such and the subdivisions and titles to issue in favour of the purchasers.
7. The issue that arises for the determination of this suit is whether the orders used to pass proprietary rights on the suit property to other 3rd parties can be a basis for a mandatory injunction directed at the defendants/respondents and the other 3rd parties to cede possession of the suit property to the applicants herein without let or hindrance.
8. A mandatory injunction is ordinarily issued in the clearest of all cases. As held in the case of *Kenya Breweries Limited v Washington Okeyo* [2002] 1 EA 109; [2002] eKLR, cited with approval in the case of *Paul Mwaniki Gachoka & another v Nation Media Group Limited & another* [2019] eKLR, where the Court held:

“A Mandatory Injunction can be granted on an interlocutory application as well as at the hearing but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear, and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the Defendant attempted to steal a match on the Plaintiff. A mandatory injunction will be granted on an interlocutory application.” ...
9. In this case, the 3rd defendants claim to be an innocent purchaser for value without notice. This is a matter which is not simple, clear, and straightforward to be decided in a summary manner. In my view, A full trial has to be conducted. It is reckoned by this Court for all purposes that a fake judgment was used to have the land transferred to the 3rd defendant. The question at the trial hereof will be - was the 3rd defendant well aware of this fake judgment? Did 3rd defendant act in concert with the other defendants? As of now, I don't know.
10. At this point status quo order will be fundamental to maintain and preserve the suit property as follows.
 - i. The land in dispute is not to be sold, charged, or passed to any other further 3rd parties till the current suit is heard and determined.
 - ii. The inhibitions in place will remain in force until the current matter is heard and determined.
 - iii. Parties to forthwith comply with order 11 *Civil Procedure Rules* and the matter be heard expeditiously to resolve the disputed issues raised.
 - iv. Costs in the cause.



DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 13TH DAY OF DECEMBER 2023.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Otieno for the Plaintiff/Applicants

Mr. Odunga for 3rd Defendant/Respondent

Court Clerk: Happy

