



REPUBLIC OF KENYA



**Hamisi v Mwambire & 3 others (Environment & Land Case  
70 of 2015) [2022] KEELC 3189 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3189 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 70 OF 2015**

**JO OLOLA, J**

**MAY 12, 2022**

**BETWEEN**

**ASHA HAMISI ..... PLAINTIFF**

**AND**

**KALUME MBITA MWAMBIRE ..... 1<sup>ST</sup> DEFENDANT**

**JUMA KOMBE YERI ..... 2<sup>ND</sup> DEFENDANT**

**KACHE CHARO YAA ..... 3<sup>RD</sup> DEFENDANT**

**KITSAO KAZUNGU MAVUO ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By this notice of motion application dated March 20, 2019 but filed herein on June 11, 2019, Asha Hamisi (the Plaintiff) prays for a temporary order of injunction to issue restraining the four (4) Defendants from trespassing onto, or carrying out any activity or dealing in any manner with all that parcel of land known as Chembe/Kibabamshe/262 situated within Kilifi County.
2. The application which is supported by an affidavit sworn by the plaintiff is based on the grounds:
  - (i) That the plaintiff is the registered owner of the suit property;
  - (ii) The defendants have invaded the property, cleared the land, cut down trees and constructed mud and wattle houses. They have also been harvesting Coral stones thereon for sale since January, 2014;
  - (iii) The suit property is in danger of being wasted and damaged by the defendants' activities; and
  - (iv) The defendants have threatened to use violence against the plaintiff in the event he resists their activities on the suit property.



3. None of the defendants responded to the plaintiff's application. From a perusal of their joint statement of defence dated and filed herein on May 30, 2018, the defendants aver as follows at paragraphs 3 to 6 thereof:

3. The defendants admit the contents of Paragraph 3 of the Plaintiff in so far as they relate to the ownership of the suit property by the plaintiff.

4. The defendants admit paragraph 4 of the plaintiff. They however contend that they were approached by the plaintiff herein to offer her clearing services, plant palm trees or in general (perform) caretaker services at a fee which was to be negotiated later.

5. Paragraph 5 is admitted, it was a term of the agreement that the Defendants were to construct temporary structures on the suit land to enable them offer the requisite caretaker services uninterruptedly (sic).

6. In reply to Paragraph 6 of the plaintiff, the defendants contend that they are willing to vacate the suit premises upon the plaintiff settling their fees.

4. The considerations for the grant of an interlocutory injunction are set out under order 40(1)(a) and (b) of the Civil Procedure Rules, 2010 which provides as follows:

“Wherein any suit it is proved by affidavit or otherwise –

(a) That any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.”

5. From a perusal of their own pleadings herein the Defendants Admit That The Plaintiff Is The registered proprietor of the suit property. They further admit that they are presently occupying the suit property and carrying on the activities complained of although they contend that it is the plaintiff who invited them to the piece of land to carry out the said activities.

6. That being the case, the defendants have no proprietary interest in or rights over the suit property. Their continued use of the land is without the authority and concurrence of the registered proprietor and their contention that the plaintiff owes them an unspecified amount of fees for the work they have done for her on the land is no basis for their stay thereon without the plaintiff's approval.

7. Arising from the foregoing, I am persuaded that the suit property is in danger of being wasted by the defendants. I accordingly find merit in the Motion dated March 20, 2019 and allow the same in terms of Prayer No. 3 thereof with costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYERI VIA MICROSOFT TEAMS THIS 12<sup>TH</sup> DAY OF MAY, 2022.**

**In the presence of:**

Mr. Shujaa for the Plaintiff



No appearance for Michira Messah for the Defendants

Court assistant - Kendi

.....

J. O. Olola

JUDGE

