



Ayub (Suing as Administrator of Estate of Ayub Ahmed Ladha (Deceased)) v Board of Trustees Pentecostal Assemblies of God & 9 others (Environment & Land Case E125 of 2024) [2025] KEELC 3099 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3099 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E125 OF 2024
FM NJOROGE, J
APRIL 3, 2025**

BETWEEN

**MOHAMED RAFIK AYUB PLAINTIFF
SUING AS ADMINISTRATOR OF ESTATE OF AYUB AHMED LADHA
(DECEASED)**

AND

**THE BOARD OF TRUSTEES PENTECOSTAL ASSEMBLIES OF GOD & 9
OTHERS & 9 OTHERS & 9 OTHERS DEFENDANT**

RULING

1. This ruling is on an application dated 2nd December 2024 which seeks the following orders:
 - a. Spent
 - b. Spent
 - c. Pending the hearing and determination of the main suit the Honorable Court be pleased to issue temporary injunction orders restraining the respondents the agents, servant, employees or any other person acting on their behalf from interfering in any manner whatsoever with plot number Portion Number 93/2 Malindi file number LT 49 Folio Number 312 File Number 4406.
2. The application is promised on the ground set out at its foot and elaborated on by the sworn affidavit of Muhammad Rafik Ayub, the plaintiff.
3. The said grounds are: that the respondents have completely obstructed the applicant from administering the deceased's estate; the first defendant has manufactured fraudulent documents purporting to be the proprietor of the suit land which he has unlawfully subdivided into numerous



portions which it has sold or leased to the rest of the respondents without the consent of the applicant/administrator; the deceased's estate has been subjected to wastage and it is in the process of being further alienated to the detriment of the lawful beneficiaries and that the applicant has a prima facie case high chances of success.

Response

4. The 1st, 4th, 5th, 6th, 7th, 8th and 9th and 10th defendants filed their joint statement of defence on 24th of December 2024 denying the claim. They also filed a Notice Of Preliminary Objection dated 20th December 2024. The grounds enumerated in the preliminary objection were subsequently made the grounds in an application dated 20th December 2024 seeking that the plaintiff's suit be dismissed and/or struck out with costs.
5. The 1st, 4th, 5th, 6th, 7th, 8th and 9th and 10th defendants also filed replying affidavit dated 20th of December 2024 sworn by Pastor Mogere Toraman Omwoyo Caleb. The gist of that affidavit is as follows: the Pentecostal Assemblies of God is right-free low-free and property registered as the proprietor and or owner and occupier of plot number 93/2 A and 19/2B registered in Volume LT 35 Folio 374/6 Malindi measuring 0.95 acres and 0.2 acres respectively. The said portions were acquired a subdivision from the original Plot Number 93/2. He exhibited an indenture and a map. He stated that the said property was duly purchased, full consideration paid, and transferred to the Church way back in 1982 by the then registered owner the late Ayub Ahmed; that upon registration and transfer, the 1st defendant took over vacant and peaceful possession and ownership property and has since continued to develop, utilize and deal with it in line with her proprietary rights. Numerous development including a Church, school, a toilet, a kitchen and other income generating structures and also the Pastor's house have been erected thereon. The property is also fenced. The Church has a membership of more than 100 followers and 100 school going children. Church worship has been held openly. Church functions have also been held openly. Economic activities too, have been undertaken openly and without interruption. No one has ever required the Church to pay any rent or challenge its ownership of the suit land whatsoever. Neither eviction nor distraint for rent has ever been sought. This has taken place during her period of about 40 years. The deponent adds that when the Church sought to obtain approval to extend and develop new structures the plaintiff of unsuccessfully tried to stop the defendants from acquiring such approval. In brief the defendant denies that a property belongs to the plaintiff, and accuses the plaintiff of failure to disclose material facts.
6. What this matter first came up before me on the 5th December 2024 for directions on the Notice of Motion currently under consideration, this court issued the interim orders compelling the respondents to maintain the status quo prevailing regarding the suit land as at the date of that order pending the hearing and determination of the application. On 20th January 2025, during a mention, the court order for the application be disposed of by way of written submissions.

Striking Out Motion Dated 26/1/2025

7. This court has however noted that the Replying Affidavit of the respondents was filed on 26th January 2025 and the application for striking out was filed on 30th January 2025, that is, 4 days apart. I have checked the CTS and I have not seen any response filed by the plaintiff to the application. What the plaintiff has filed is an affidavit in reply to the Notice of Preliminary Objection. Usually a Notice of Preliminary Objection needs no reply by way of affidavit. Now the Notice of Preliminary Objection is in point form while the application and supporting affidavit filed for the purpose of striking out the plaintiff's suit raise issues of both law and fact which required to be responded to for the just disposal of the application. As per the holding in the renowned *Mukisa Biscuits Manufacturers Limited Vs*



West End Distributors Ltd [1969] EA 696, issues raised in a preliminary objection can speak for themselves as they require no argumentation. I deem that application as the proper way of raising the objections earlier raised in the preliminary objection. It is clear that no directions have been taken on that application since it was filed long after the main directions on the plaintiff's application were issued on the 5th December 2024. In this court's view it is an application that is capable of being deemed a response to the plaintiff's main suit and motion for injunction. If the plaintiff is not made aware of the need to respond substantively to the same, he may be gravely prejudiced in the event the court gravitates towards granting the striking out orders sought, and any dissatisfaction therefrom may further protract these proceedings. Consequently, it would be desirable for the plaintiff to file his answer to that motion whereupon the court shall deal with the two motions simultaneously for the purpose of delivery of a single ruling thereon. The upshot of the foregoing is that the ruling on the plaintiff application dated 2nd December 2024 is hereby deferred to pave the way for the simultaneous disposal of the two applications on record. Further, to facilitate this, it is hereby ordered that the plaintiff shall file a substantive response to the defendant's Motion dated the 20th December 2024 within 14 days from the date of this order. The applicant in the motion dated 20th December 2024 shall have leave to respond to the replying affidavit filed in opposition to the motion within 7 Days of service of such replying affidavit. To expedite the disposal of both Motions there shall be no further mention thereof and the consolidated ruling thereon shall be delivered on 6th May 2025.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 3RD DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

