



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Charo (Suing herein as the Administrator of the Estate of Emmanuel Edward Charo - Deceased) v Kambi (Environment & Land Case E010 of 2025) [2025] KEELC 4178 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4178 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E010 OF 2025**

EK MAKORI, J

MAY 29, 2025

BETWEEN

PETER KARISA CHARO (SUING HEREIN AS THE ADMINISTRATOR OF THE ESTATE OF EMMANUEL EDWARD CHARO - DECEASED) PLAINTIFF

AND

KAHINDI KAMBI DEFENDANT

RULING

1. The application dated February 1, 2025, submitted by the Applicant and supported by the attached affidavit of Peter Karisa Charo, sworn on February 13, 2025, seeks injunctive relief against the Respondent, Kahindi Kambi, who opposed the application through the replying affidavit sworn on February 25, 2025.
2. The court directed that the application be canvassed through written submissions. The Respondent complied, but the Applicant did not.
3. The matters that pertain to the determination of this court are whether the Applicant has met the threefold criteria necessary to issue an interlocutory injunction, as established in the prominent case of *Giella v. Cassman Brown & Co. Ltd* (1973) EA 358Brown, and who ought to be responsible for the costs of the application.
4. The Applicant asserts that the subject property, identified as land reference No. Kilifi/Mtondia/156, encompassing approximately 12 acres, has been occupied by their lineage since 1978. The respondent, lacking any legal right, has unlawfully encroached upon the subject property and commenced construction activities. Consequently, an injunction is sought to restrain the Respondent before the hearing and determination of this matter.
5. Applicant avers that he has met the threshold for an award of an injunction.



6. The Respondent asserts that the triple requirements established in the Giella Case (supra) have not been substantially fulfilled, as the Applicant and his family occupy and/or possess a portion of land measuring $\frac{1}{4}$ acre of the suit land, while the Respondent and his family occupy and/or possess the remainder of the suit land within the referenced land No. Kilifi/Mtondia/156.
7. The Respondent further submits that the parties have constructed and/or developed their distinct portions over the years, a fact which the Applicant acknowledges in this matter.
8. The Respondent has informed this court that both parties have interred their loved ones in their respective portions of the suit property. The Respondent further submits that the Applicant is not entitled to any remedy recognized in the law of equity due to material non-disclosure. It is within the Applicant's knowledge that the suit ELC No. E002 of 2020 is currently pending before the court (Makori J.), in which the Respondent has sued the Applicant and his family members over the same property. That matter is awaiting hearing and determination. The Respondent submits that the application filed herein is ineffective, baseless, unmeritorious, and amounts to an abuse of the court process.
9. I have conducted a review of ELC No. E002 of 2020. The suit pertains to the identical issues presented herein, specifically concerning the subject matter of Kilifi/Mtondia/156, where both parties are seeking to be recognized as the owners of the property in question. The parties involved remain unchanged, with the sole distinction being that the Defendant assumes the role of the Plaintiff and vice versa.
10. The Court of Appeal elaborated upon the concept of abuse of the court process in the case of Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 others, Civil Appeal No. 25 of 2002 (2009) eKLR 229. In addressing the principle of abuse of court process, the Court stated as follows:

“The term abuse of Court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. It is a term generally applied to a proceeding, which is wanting in bona-fides and frivolous, vexatious or oppressive.”
11. In *Bore v Spire Bank Limited & another* (Civil Case 8 of 2020) [2024] KEHC 1034 (KLR) (February 8, 2024) (Ruling), the court addressed the same concept, stating:

“Abuse of the Court process is a settled legal principle applicable on two fronts. First, from a public interest perspective, duplication of proceedings is a waste of precious Court time and resources. That is in addition to the risk of inconsistent findings which threaten to bring the administration of justice into disrepute. Second, from a private interest perspective, it is highly vexatious and oppressive to the opposite parties not only in terms of time and costs, but also in that the “dry-run” of the claim in the prior proceedings affords the Plaintiff an opportunity to refine its case and work around any defence, evidence or explanation that the opposite party in the subsequent action put forward.”
12. I need not contemplate the issuance of an injunction, as the entirety of the lawsuit represents an abuse of the court process, given that there exists an active and pending matter regarding the same subject matter and parties, in contravention of the sub judice rule. The present application is dismissed with costs.



DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 29TH DAY OF MAY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Michira for the Defendant

Happy: Court Assistant

In the Absence of:

Mr. Katsoleh for the Plaintiff

