



Committee of the Board of Management Saada Muslim Society v Bawazir & 8 others (Environment & Land Case 225 of 2017) [2022] KEELC 15425 (KLR) (20 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15425 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 225 OF 2017
MAO ODENY, J
DECEMBER 20, 2022**

BETWEEN

THE COMMITTEE OF THE BOARD OF MANAGEMENT SAADA MUSLIM SOCIETY PLAINTIFF

AND

**AHMED SALIM ABDALLA BAWAZIR 1ST DEFENDANT
SWALEH SALIM ABDALLA BAWAZIR 2ND DEFENDANT
SAID SALIM ABDALLA BAWAZIR 3RD DEFENDANT
ABDULLA MOHAMED EL JABRI 4TH DEFENDANT
COMMISSIONER OF LANDS 5TH DEFENDANT
THE NATIONAL LANDS COMMISSION 6TH DEFENDANT
THE DIRECTOR OF SURVEYS 7TH DEFENDANT
REGISTRAR OF LANDS KILIFI 8TH DEFENDANT
ATTORNEY GENERAL 9TH DEFENDANT**

RULING

1. This ruling is in respect of a Notice of Motion dated September 2, 2021 by the Plaintiff/applicant seeking the following orders;
 - a) Spent
 - b) Spent



- c) That pending the hearing and determination of this suit, an order of injunction be issued against the defendant/respondents, their servants, agents and/or any person acting under them erecting/building/putting up a new mosque in place of the illegally demolished Masjid Al-azhar Mosque
 - d) That costs of this application be in the cause.
2. The application is anchored on the sworn affidavit of Omar Awadh Omar a treasurer of the plaintiff-Saada Muslim Society the committee mandated to run or take charge of the Saada Muslim Mosque, Madrassa and all other Wakf properties movable and immovable owned by the society.
3. The applicant deponed that the defendants have illegally taken over the ownership the mosque, the staff. the madrassa and all properties associated with the mosque and proceeded to unlawfully evict the plaintiffs who are the duly constituted committee mandated to preside over the affairs and or operations of the mosque.
4. It was the applicant's case that the defendants have proceeded to illegally demolish, pull down, and or destroy the mosque and are in the process of putting up a new mosque ostensibly under new management and or control of the defendants who are members of one family to the exclusion of fellow worshippers and with the end result denying others the benefit of a property owned by the society which they are apprehensive will occasion irreparable loss.
5. The respondents opposed the application vide a replying affidavit sworn by Swaleh Salim Abdalla Bawazir the 2nd defendant who deponed that the Society (Saada Muslim School Society) was registered on January 26, 1983, however, with time most of the original members passed on and the society became defunct therefore the alleged current committee members have no locus standi to present proceedings for reasons that no minutes have been presented to show their election as committee members.
6. The respondent further stated that the said Mosque and Madrassa are in Plot Subdivision Number 960/III/MN TITLE NUMBER CR 23773 situate in Kikambala, Kilifi County where the defendants are the registered owners of the said plot having inherited it from their late father Sheikh Salim Abdalla Bawazir. Further that vided a meeting held on March 29, 2016 it was resolved that since there exists a title deed in the defendants names, the family of Sheikh Bawazir Mohamed shall maintain the Mosque and the Madrassa which status quo was maintained vide a letter dated December 23, 2016 by the Kadhi Sheikh Mohamed S. Mwambele of Mombasa Kadhi Courts thus they have the authority to run the affairs of the mosque as such intended to increase its capacity.
7. It was the respondent's case that they demolished the existing mosque to build a larger mosque to accommodate the growing number of worshippers and that they did not intend to deprive the plaintiffs its rights to property as alleged since they do not own the same.
8. The respondents urged the court to dismiss the application as the applicants have not established a prima facie case.
9. Counsel reiterated the grounds on the face of the application together with the supporting affidavit and submitted that the applicants have established a prima facie case against the respondents.
10. Counsel relied on the cases of *Giella v Cassman Brown & Co. Ltd* [1973] E.A. 358, *Kenleb Cons Ltd vs New Gatitu Service Station Ltd & another*, [1990] eKLR and urged the court to grant the orders as prayed.



1st To 3rd Defendants' submissions

11. Counsel submitted that the plaintiffs have not established that they have a prima facie case since the 1st and 3rd defendants are the registered owners of the suit land where the Mosque and Madrassa are located. Further that the plaintiffs have not shown an alternative title to the suit land which they claim to be theirs.
12. Counsel submitted that the plaintiffs have only provided a Certificate of registration from the Registrar of Societies which does not confer ownership. And that the respondents have annexed the plaintiffs' Annual returns to prove that the plaintiff neither owns that Madrassa nor the mosque as alleged.
13. It was counsel's further submission on behalf of the respondents that the balance of convenience tilts in favor of the respondents as the construction of the new mosque which is already completed is for the benefit of accommodating more worshippers thus no illegal demolition was done.

Analysis And Determination

14. These are the types of cases which should benefit from the implementation of Alternative Justice System which has the capacity to resolve these disputes within the locality, by the people, expeditiously without causing animosity between the "winners and the losers" syndrome in our adversarial system.
15. The issues for determination is an application for injunction is whether an applicant has established a prima facie case against the defendant. If such is done, then the court will issue the order if satisfied that all the conditions for grant of an injunction have been met.
16. The law governing the grant of interlocutory injunction is set out under order 40(1) (a) and (b) of the [Civil Procedure Rules](#) 2010 which provides that: -

"Where in any suit it is proved by affidavit or otherwise—

 - (a) That any property in dispute in a suit 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."
17. The applicant has not established that the suit land for which the Mosque is being built is registered in its name. In fact, the respondent have established that the suit land which the Mosque and Madrassa is situate is registered in their name and that they have built a bigger Mosque and Madrassa for the benefit of more Worshippers. It is also on record that the suit land was acquired through inheritance from their late father which can be seen from the certificate of confirmation of grant that has been annexed. This has not been rebutted by the applicants.
18. Having considered the application and the documents annexed I am not satisfied that the applicants have established a prima facie case with a probability of success. The Balance of convenience lies in favour of the respondents who are the registered owners of the suit land where the Mosque and Madrassa are situate and have built a new Mosque to accommodate more worshippers.
19. The upshot is that application is dismissed with costs to the respondents.



DATED, SIGNED AND DELIVERED AT MALINDI THIS 20TH DAY OF DECEMBER, 2022.**

M.A. ODENY

JUDGE

