



Zani (Suing as the Administrator of the Estates Of Zachariah Mwadembwe Zani and Tereza Kadzo Zani) v Kazungu & 6 others (Environment & Land Case E063 of 2024) [2025] KEELC 1262 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1262 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E063 OF 2024
EK MAKORI, J
MARCH 13, 2025**

BETWEEN

NICHOLAS ZANI (SUING AS THE ADMINISTRATOR OF THE ESTATES OF ZACHARIAH MWADEMBWE ZANI AND TEREZA KADZO ZANI) PLAINTIFF

AND

**TOM KAZUNGU 1ST DEFENDANT
KATANA KALAMA 2ND DEFENDANT
JACKSON KARISA 3RD DEFENDANT
MERCY WANJIKU 4TH DEFENDANT
RAMA MWAKOMBE 5TH DEFENDANT
ALEX KASHURU MUHAMBI 6TH DEFENDANT
CHARO JOHN NGUMBAO 7TH DEFENDANT**

RULING

1. The Plaintiff/Applicant moved this court on the 1st of July 2024 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That this Honourable Court does issue a temporary injunction restraining the Defendant/ Respondents either by themselves, agents, servants, and/or anyone claiming under the Defendants from entering, trespassing onto, cultivating, building structures thereon,



interfering with, and/or in any other manner dealing with the suit land, that is plot Kilifi/Mtwapa/192 until hearing and determination of this suit.

- d. That this Honourable Court does issue a permanent injunction restraining the Defendant/ Respondents either by themselves, agents, servants, and/or anyone claiming under the Defendants from entering, trespassing onto, cultivating, building structures thereon, interfering with, and/or in any other manner dealing with the suit land, that is plot Kilifi/Mtwapa/192 until hearing and determination of this suit.
 - e. That this Honourable Court does issue a permanent injunction restraining the Defendant/ Respondents either by themselves, agents, servants and/or anyone claiming under the Defendants from entering, trespassing onto, cultivating, building structures thereon, interfering with, and/or in any other manner dealing with the suit land, that is plot Kilifi/Mtwapa/192.
 - f. That the area Officer Commanding Station ensure the orders issued by this Honourable Court are fully complied with.
 - g. Costs of the instant application shall be provided for and, in this case, borne by the Defendant/ Respondents herein.
 - h. Damages (General and Special damages)
 - i. Such further and/or other orders be granted as the court may deem fit and expedient.
2. The Applicants served all concerned parties to these proceedings. No response was filed to the application nor in answer to the grievances raised by the Applicant in the plaint.
 3. The court directed the filing of submissions to dispose of the pending application. The core issues I frame pending for the determination of this application are whether the court should grant temporal injunctive orders and who should bear the application costs. That is whether the applicant has attained the standard set in the leading decision in *Giella v Cassman Brown & Co. Ltd* [1973] E. A 358 - The applicants have established a prima facie case with a probability of success at the trial. The Applicants will suffer irreparable injury, which would not be adequately compensated in damages. If the court is in doubt, it will decide the application on a balance of convenience.
 4. The Applicant contends that the suit property is currently registered under the names Zachariah Mwadembwe Zani and Tereza Kadzo Zani (deceased), the parents of the Plaintiff/Applicant in this matter. Thus, the Plaintiff/Applicant is the legal owner of the suit property and ought to find protection conferred to him under Article 40 of *the Constitution* of Kenya 2010, as read together with the provisions of sections 24(a), 25, and 26(1) of the *Land Registration Act* No. 3 of 2012. The Plaintiff/Applicant is the son, personal representatives, and the administrator of the estates of the deceased proprietors and is duly appointed by the courts of law and thus empowered to represent the estate in a suit as evidenced by letters of administration in annexures of Notice of Motion dated 1st July 2024. Therefore, the Plaintiff/Applicant legally possesses the suit property. The deceased and later the Estate of the deceased have been in uninterrupted occupation from when the deceased purchased the land over 40 years ago, as evidenced in the Land Control Board Consent of 1985; the Plaintiff has been farming, subdividing for sale, and running other business on the suit property, which was fenced /hedged via eucalyptus trees, which the Defendants have been cutting as evidenced in photos in supporting affidavit. The Plaintiff reported the trespassing and destruction of property in mid-July 2023 at Mtwapa Police Station via OB number 57 on 24/08/2023 and to the Chief Mtwapa in July 2023. The 6th and the 7th Defendants were arrested and charged.



5. The Applicant believes that the law provides for interlocutory orders where there is a danger of damage or wastage of suit property under Order 40 Rules 1(a) & (b).
6. On the face of it, the Applicants argue that he has established a prima facie case against the Defendants with a probability of success as was opined In MRAO Limited v First American Bank Limited [2003] KLR 125, where Bosire JA. when considering what constitutes a prima facie case in a civil case observed thus:

“I would say that in civil case, it is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there do exist a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the other.”
7. The Respondents served did not attend court to contest the facts of the events as offered by the Applicant.
8. The affidavit by the Applicant shows that since the Respondents have failed to respond to the Applicant’s grievances, the Applicant has established a right that is likely to be infringed. In the supporting affidavit, the Applicant averred that since mid-last year, the Respondents have been trespassing onto the Applicant’s suit property and cutting down trees. The affidavit does not show whether the Respondents have gone beyond cutting trees and settled on the suit property. The appropriate orders I propose at this point pending a hearing are status quo orders on the ground to be maintained pending the hearing and determination of this suit, that is, the registration of the suit property to remain intact, and that the respondents do not undertake any other activities on the suit property to the detriment of the applicants until this matter is heard and determined. The OCS Mtwapa to ensure compliance. Costs in the cause.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 13TH DAY OF MARCH 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr.Chege, for the Applicants

Happy: Court Assistant

The Absence of:

The Respondents

