



Mweni & 10 others v Muse & 2 others (Environment & Land Case E040 of 2023) [2025] KEELC 2985 (KLR) (1 April 2025) (Ruling)

Neutral citation: [2025] KEELC 2985 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E040 OF 2023**

FM NJOROGE, J

APRIL 1, 2025

BETWEEN

ELVIS MWENI & 10 OTHERS & 10 OTHERS & 10 OTHERS & 10 OTHERS & 10 OTHERS & 10 OTHERS PLAINTIFF

AND

ABDULLA MOHAMED MUSE & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS DEFENDANT

RULING

1. The application placed before this court for determination is dated 11th December 2024. It seeks an order of temporary injunction restraining the respondents from interfering with all that land known as LR No MN /III/ 9 Kilifi South pending hearing and determination of the present suit.
2. The grounds upon which the application is made are contained in the application and in the supporting affidavit of the applicants sworn with their authority by the 1st applicant dated 11/12/2024. The grounds are that the applicants reside on some parts of the suit land and have been in such residence since 1932; that the respondents manage the land as trustees. The plaintiffs however admit that they do not have any ownership documents. They add that the 1st plaintiff was nominated by the others to negotiate with the defendants over the issue of securing their ownership documents and the negotiations began more than a decade ago. An agreement was however arrived at in 2013 to have the parcels occupied by the plaintiffs demarcated and subdivision done. The defendants were authorized to subdivide the land by the National and County Governments. On 11th August 2020 the parties went to the suit land with the defendants’ surveyor. Survey and beaconing was done. The 2nd defendant who was supposed to attend the Land Control Board for consent failed to attend. However, consent was still granted at the application of the 1st plaintiff. Deed Plans were forwarded to the Survey Department and eventually to the Land Registrar Mombasa. Thereafter, the deponent claims the defendants planned to scuttle the process by having him arrested and arraigned in court at Mombasa, a prosecution they



have impugned in a constitutional petition in the High Court, to wit, Mombasa HCCHRPET E072 of 2024. The applicants state that they have a right under the constitution to own land which this court must protect.

3. The 2nd and 3rd defendants filed their respective replying affidavits dated 18/2/2025 whose contents are identical. They deponed that the 1st defendant died on 14/7/24; the defendants admit that the three of them are the trustees of a Wakf administering the suit property; it is deponed that the plaintiffs are unknown to the deponents and have never lived in the suit land; they deny being privy to the alleged negotiations agreement, survey or subdivisions alleged by the plaintiffs or even the alleged meetings at the County Commissioner's office. They disown the processing of the alleged Deed Plans mentioned by the plaintiffs. They admit that they filed a criminal complaint with the police against the plaintiffs for having tried to obtain fraudulently ownership documents over portions of the suit property. They aver that the plaintiffs lack any legitimate or enforceable claim title or interest in the suit property.

Analysis and determination.

4. The issue for determination is whether the temporary orders of injunction sought ought to issue.
5. The plaint reads that the applicants have resided on the suit land with the knowledge and consent of the defendants. The defendants on the other hand deny that allegation. I have however seen the following: an exhibit with the District Officer's stamp labelled as an agreement dated 27/8/13 to carry out boundary survey; 2 letters on Ministry Of Lands And Urban Development letterhead on the subject of subdivision, one dated 5/11/2014 and the other dated 11/12/2014, the latter giving final subdivision approval; a letter on a Ministry of Interior letterhead dated 3/8/2020 to the 2nd respondent seeking that he attends a meeting accompanied by his surveyor; documents from Petition No Mombasa Law Court Case Number: HCCHRPET/E072/2024 Citation: Mourice Pole Tsuma and Elvis Ndoko Mweni Vs Inspector General Of Police and The Chief Magistrate Mombasa And 8 Others which attach various documents including a certificate of subdivision, a letter from the DPP dated 17/8/2022 intimating that upon examination of the facts, he finds that there has been a boundary dispute that the County Commissioner's office at Kikambala have been handling and that the defendants had been part of those meetings regarding the dispute; it also observes that both parties have been inhabitants of the suit land; the Land office's letter dated 15/2/2024 seeking surrender of the mother title to the suit land by the defendants and intimating that the deed plans have been received in that office. Besides, it is evident that the present suit was lodged in November 2023 and the Charge Sheet in the criminal case against a section of the plaintiffs alleging illegal subdivision of the suit land is dated 2/12/2024. The opinion of the DPP is that the accused persons have been on the land and have been engaged with the defendants herein for some purpose. This court needs no further persuasion beyond those documents that the applicants have been in occupation and that there have been peaceful engagements between them and the respondents over the issue of subdivision for a certain purpose. The plaintiffs would this court believe that subdivision and production of Deed Plans was for the purpose of issuing them with documents of title. However, it is at the hearing that each party will state why they were engaged in such subdivision arrangements. I find that the plaintiffs have established a prima facie case. If the possession that they have been enjoying is allowed to be disturbed willy-nilly by the defendants the consequences may be prejudicial to their claim herein and they may suffer irreparable loss. Consequently, this court finds that the application dated 11/12/2024 has merit and it is hereby granted in terms of Prayer No 3 thereof. The costs of the application shall be in the cause. For expeditious finalization of the suit I issue the following orders:
 - a. The plaintiff is hereby granted 21 days from today within which to file and serve any documents they intend to rely on at the hearing which they may not have filed and served



and the same shall be supported by a supplementary list of documents and be contained in a consolidated duly indexed and paginated bundle which includes all the documents and lists, if any, filed earlier;

- b. The defendants are hereby granted 42 days from today within which to file and serve any documents they intend to rely on at the hearing which they may not have filed and served and the same shall be supported by a supplementary list of documents and be contained in a consolidated duly indexed and paginated bundle which includes all the documents and lists, if any, filed earlier;
- c. All parties shall ensure that their witness statements are drafted with reference and elaboration on their exhibits, with exhibits duly numbered, in such manner that they will simply adopt them at the hearing with minimal or no extra comments and be cross-examined thereon; old statements that do not conform to that rule shall be redone and re-filed;
- d. This suit shall be listed for a mention on 29/5/2025 to confirm compliance for the purpose of issuing a hearing date.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 1ST DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

