



**Mbuthia & 2 others (Suing for and on behalf of Mpeketoni Jua Kali Savings and Credit Cooperative Society Limited) v Kilonzi & 5 others (Environment & Land Case 16 of 2020) [2025] KEELC 4417 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4417 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 16 OF 2020  
FM NJOROGE, J  
JUNE 10, 2025**

**BETWEEN**

**BENSON CHEGE MBUTHIA ..... 1<sup>ST</sup> PLAINTIFF  
SIMON MUCHIRA GACHOKI ..... 2<sup>ND</sup> PLAINTIFF  
LUCAS NG'ANG'A JOHN ..... 3<sup>RD</sup> PLAINTIFF  
SUING FOR AND ON BEHALF OF MPEKETONI JUA KALI SAVINGS AND  
CREDIT COOPERATIVE SOCIETY LIMITED**

**AND**

**DANIEL KILONZI ..... 1<sup>ST</sup> DEFENDANT  
CHARLES MAINA MWITA ..... 2<sup>ND</sup> DEFENDANT  
PETER IKENYE KWERI ..... 3<sup>RD</sup> DEFENDANT  
JOHN MACHARIA ..... 4<sup>TH</sup> DEFENDANT  
PETER NJAU ..... 5<sup>TH</sup> DEFENDANT  
COUNTY GOVERNMENT OF LAMU ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. The subject of this ruling is the Plaintiffs' application dated 28/3/2025 in which they seek the following orders: -
  1. Spent;
  2. Spent;



3. That upon inter-parties hearing, this honourable court be pleased to issue an order of temporary injunction restraining the Defendants/respondents by themselves, their agents, servants, representatives, assigns and any other person claiming under them from interfering with, trespassing on, constructing, setting up temporary or permanent structures, constructing or continuing with the currently ongoing construction of the public toilet building or structure or any other subsequent structures on the suit property being Plot Number 707 measuring approximately 0.01 Hectares situated at Jua Kali area in Mpeketoni within Lamu County pending the hearing, determination and final disposal of the suit herein;
  4. That this honourable court be further pleased to make such other interlocutory orders as may appear to the Court to be just and convenient;
  5. That costs of this application be provided for.
2. The basis of the application is the grounds indicated in the Notice of Motion and also in a supporting affidavit sworn on 28/3/2025 by Lucas Ng'ang'a John, the 3<sup>rd</sup> Plaintiff herein. The deponent narrated that pursuant to an order of the Court made on 22/1/2025 and in view of the submissions by the 1<sup>st</sup> Defendant that the 6<sup>th</sup> Defendant was the one responsible for putting up a public toilet building on the Plot Number 707 measuring approximately 0.01 Ha situated at Jua Kali area in Mpeketoni within Lamu County (the suit property), the 6<sup>th</sup> Defendant was joined to the present proceedings.
  3. According to the Plaintiffs, sometime in the year 2015, the 6<sup>th</sup> Defendant, in conjunction with surveyors from Nairobi conducted a survey and identification of the respective owners of the Mpeketoni town plots and released a new Mpeketoni Town Plan, in which the suit property was amalgamated with Plot 706 belonging to the 1<sup>st</sup> -5<sup>th</sup> Defendants and the whole of it given the number "Plot No. 706" while the new plot 707 was allegedly moved to a different location and allocated to a different individual. To the Plaintiffs, this move was deliberately done by the 6<sup>th</sup> Defendant with the malicious intention of trespassing and intruding onto the suit property and depriving the Plaintiffs of their property.
  4. The 6<sup>th</sup> Defendant filed a replying affidavit sworn on 4/4/2025 by Paul M. Munyendo, said to be its Chief Physical Planning Assistant. He stated that the said Plot 706 is a public utility land set aside for light industrial use, registered in the name of the 6<sup>th</sup> Defendant and reserved for jua kali sheds. He exhibited a copy of certificate of search to that effect. He explained that the 1<sup>st</sup> -5<sup>th</sup> Defendants are jua kali artisans lawfully carrying on business as such on the Plot 706 with the permission of the 6<sup>th</sup> Defendant, which has an obligation to ensure provision of sanitary working conditions for the artisans.
  5. The 6<sup>th</sup> Defendant explained that during the verification exercise mentioned by the Plaintiffs, it became necessary to restructure the block while taking into consideration the realities on the ground. He asserted that Plot 706 was never amalgamated with the suit property and that the former plot has never increased in acreage as alleged by the Plaintiffs. He added that the re-arrangement of the plots was done for public good and with the full knowledge of the Plaintiffs who took possession of an alternative plot. To the deponent, the Plaintiffs had failed to establish a prima facie case or demonstrate irreparable loss as is required in an application for injunction. He urged the Court to dismiss the application.
  6. The application was canvassed by way of written submissions which I have keenly considered in my determination.



## ANALYSIS AND DETERMINATION

7. The sole issue for determination in the present application is whether a temporary injunction should be issued against the Defendants.
8. As I stated in my previous ruling of 13<sup>th</sup> November 2024 regarding the same subject matter, the conditions for granting an order for interlocutory injunction are now settled. Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be granted unless an applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. These principles were established in *Giella vs. Cassman Brown & Co. Ltd* 1973 E.A 358.
9. The substantive law is Order 40 rule 1 of the Civil Procedure Rules which provides:

“Cases in which temporary injunction may be granted [Order 40, rule 1]

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 orders.”
10. In the present case, there is no doubt that the 6<sup>th</sup> Defendant is in the process of constructing a public utility area within the suit property claimed by the Plaintiffs. Notably, an order of injunction had previously been issued by this Court on 13/11/2024 against the 1<sup>st</sup>-5<sup>th</sup> Defendants, as the 6<sup>th</sup> Defendant had not been joined to the proceedings.
11. In their amended plaint and present application, the Plaintiffs claim that they purchased the suit property vide a sale agreement dated 5/11/2018 from the Trustees of Mpeketoni Electricity Project which owned the same by virtue of a letter of allotment dated 23/8/1998. The land was then described as unsurveyed industrial plot-Mpeketoni measuring 0.02 Ha. As per the sale agreement, the Plaintiffs purchased half of the unsurveyed land.
12. The Defendants claim that when the survey or verification process was done in 2015, the Plaintiffs were allocated a different area while Plot 706 was reserved for public use, and Plot 707 was allocated to one Joyce Njeri Mburu. He added that adjacent to Plot 706 was a public utility land approved and marked for Electricity House, which had to be moved to a further land away from the town center due to noise pollution. The Electricity House was thus allocated Parcel Number Lamu/Lake Kenyatta I/3690, where the plaintiffs shifted to.
13. What the 6<sup>th</sup> Defendant does not state is the plot number previously occupied by the Electricity company, which to me appears to have been the plot that the Plaintiffs could have probably purchased from the Electricity company. It is also not clear when the Electricity company moved from the plot



adjacent to Plot 706. Having this and the Plaintiffs' allegations in mind, I am convinced that the Plaintiffs have established that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter at the full hearing of the suit. In other words, I find that the Plaintiffs have established a prima facie case.

14. On irreparable injury, the Plaintiffs are apprehensive that the 6<sup>th</sup> Defendant will dispossess them of their rightly acquired land by way of construction of the public utility area. In the given circumstances and bearing in mind the provisions of Order 40 rule 1 above, I am satisfied that a temporary injunction should be issued to restrain the 6<sup>th</sup> Defendant's acts pending the hearing and determination of this suit.
15. The upshot is that the application dated 28/3/2025 is merited and it is hereby allowed.
16. However, the parties herein shall ensure that they have filed their trial bundles, duly indexed and paginated, the plaintiffs within 30 days and the defendants within 30 days of service of the plaintiffs' bundle upon them, or in any event within 60 days from the date of this order and the suit shall be listed for confirmation of compliance and issuance of a hearing date on 28/10/2025.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 10<sup>TH</sup> DAY OF JUNE 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

