



Abbas (Suing under Power of Attorney through Mohamed Ali Naushad Hussein Jiwa) v Shapi & 7 others (Environment and Land Case E008 of 2020) [2025] KEELC 5051 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5051 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E008 OF 2020**

**EK MAKORI, J
JULY 3, 2025**

BETWEEN

**FATMA SAYED ABBAS APPLICANT
SUING UNDER POWER OF ATTORNEY THROUGH MOHAMED ALI
NAUSHAD HUSSEIN JIWA**

AND

**KHALID GULMOH'D KHAMIS SHAPI 1ST RESPONDENT
MANGI CHARO YAA 2ND RESPONDENT
REGISTRAR OF LANDS KILIFI 3RD RESPONDENT
CHIEF LANDS REGISTRAR 4TH RESPONDENT
DIRECTOR OF LAND ADJUDICATION & SETTLEMENT .. 5TH RESPONDENT
SETTLEMENT FUND TRUSTEES 6TH RESPONDENT
NATIONAL LAND COMMISSION 7TH RESPONDENT
THE ATTORNEY GENERAL 8TH RESPONDENT**

RULING

1. The Applicant filed an application dated January 31, 2025, requesting the following orders:
 - a. That an injunction is hereby issued against the 1st Defendant by themselves, their agents, servants, or assigns, restraining them from leasing, transferring, charging, taking possession of, developing, or in any other manner whatsoever dealing with the suit property pending the hearing and determination of this application.



- b. That an injunction is hereby issued against the 1st Defendants, by themselves, their agents, servants, or assignees, restraining them from leasing, transferring, charging, taking possession of, developing, or in any other manner dealing with the suit property pending the hearing and determination of this suit.
 - c. That this Court be pleased to grant an injunction against the 3rd and 4th Respondent, restricting them, their agents, or servants from making any changes to the Lands Registrar regarding the ownership of the suit property, Kilifi/Madeteni/608, pending the hearing and determination of this application.
 - d. That this Court be pleased to grant an injunction against the 3rd and 4th Respondent, restricting them, their agents or servants from making any changes in the Lands Registrar regarding the ownership of the suit property, Kilifi/Madeteni/608, pending the hearing and determination of this suit.
 - e. That in alternative to prayers 2, 3, 4, and 5, this Court be pleased to issue an order of status quo on Kilifi/Madeteni/608 pending the hearing and determination of this application.
 - f. That in alternative to prayers 2, 3, 4, and 5, this Court be pleased to issue an order of status quo on Kilifi/Madeteni/608 pending the hearing and determination of this suit.
 - g. That the costs of this application be provided for.
2. In response to the Application, the 1st Defendant/Respondent filed a Preliminary Objection dated February 25, 2025, asserting, among other grounds, that the application is res judicata.
 3. The application and the PO raised were discussed through written submissions. I acknowledge receipt of the submissions from counsels representing all the parties, for which I am grateful.
 4. Based on the materials and submissions presented before me, I frame the following questions for determination by this Court: whether the PO is competent, whether the instant application is res judicata, and whether this Court should issue the injunctive orders sought, as well as who should bear costs.
 5. In consideration of the parties' averments, I acknowledge that my brother, Olola J., has previously handled a similar application. Therefore, I will discuss the issues raised simultaneously.
 6. In the Supporting Affidavit of Mr. Mohamedali Naushadhusein Jiwa, it is pointed out that the Gazette Notice No. 5266 dated May 2024, which the Applicant believes signals the 1st Respondent's intention to deal with the suit property, is significant as it indicates an intention to reconstruct the green card for the suit property.
 7. According to the Applicant, an injunction or status quo order should be issued to preserve the status quo of the suit pending a hearing, since the issue of Gazettement is not contested.
 8. Conversely, the PO filed by the 1st Defendant noted that in the ruling dated June 9, 2022, Olola J. addressed the issues the applicant seeks to revive when deciding whether to grant an injunction.
 9. The Applicant argues that new circumstances have arisen requiring this court's intervention. These circumstances include the 1st Defendant/Respondent's attempt to obtain a new Green Card for the suit property, as evidenced by Gazette Notice No. 5266, dated May 3, 2024, claiming that the original is 'missing.' This development, occurring well after the June 9, 2022, ruling, was not presented to this Court in the previous application. Therefore, the doctrine of res judicata does not apply—see the cited case of the Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR,



where the Supreme Court held that res judicata does not apply when new facts or evidence significantly change the issues in question.

10. The Applicant asserts that the Gazette Notice represents a significant change, demonstrating a new threat to the Applicant's interests and justifying the current request for injunctive relief.
11. Furthermore, the application dated January 31, 2025, requested specific injunctive orders against the 1st Respondent and the 3rd and 4th Respondents, aimed at preventing the ongoing risk of alienation or alteration of the ownership of the suit property in light of the Gazette Notice and the current dispute before this court. Even if the previous application sought similar relief, the factual circumstances have changed, making the issues no longer identical. See Eunice Wanjiru Gathithi, the legal representative of the late Fredrick Gathithi Kabue v Cannon Assurance Kenya Ltd [2012] eKLR, where the court emphasized that res judicata requires exact parity of issues and parties, determined on their merits.
12. The Applicant argues that the factual background of this case is substantially different from the previous ruling. The Applicant contends that relying on Gazette Notice No. 5266 shows a sincere effort to protect their interests against emerging threats rather than an abuse of the court process.
13. Regarding the issuance of an injunction, the Applicant states that they have been the registered owner of Kilifi/Madeteni/608 since 1986. The Lands Registrar of Kilifi confirmed this in a letter dated November 30, 1993. The Applicant then surrendered the Title Deed in compliance with the Ministry of Lands' directive dated May 30, 1986. This surrender was a mandatory requirement at the time, and her compliance with the directive demonstrates her good faith and cooperation with the Ministry's instructions. Later, the Ministry of Lands acknowledged her surrender in a communication dated February 24, 2015, further supporting her legitimate expectation of receiving a new Certificate of Lease. Since the original Title Deed was surrendered to the authorities as required, she no longer has a copy in her possession.
14. The absence of the title document is therefore a direct result of the Applicant's compliance with the official process required by the Ministry, rather than any negligence or fault on her part. Since the relevant authorities have both the record of her ownership and the surrendered title, she reasonably relies on their documentation to confirm her rights to the property.
15. The applicant claims that the suit property was fraudulently transferred to the 2nd Respondent on March 13, 2016, and subsequently to the 1st Respondent on August 28, 2017, without her consent, without approval from the Land Control Board, and execution by the Land Registrar of Kilifi. These irregularities, along with Gazette Notice No. 5266, which shows the 1st Respondent's ongoing attempts to alter the title, raise serious questions about the legality of the title and potential fraud, giving the Applicant a high likelihood of success at trial. Furthermore, the Applicant faces the risk of irreparable harm if injunctive orders are not granted.
16. The 1st Respondent's application for a new Green Card, referenced in Gazette Notice No. 5266, indicates an intent to further transact or dispose of the suit property. Given the history of fraudulent transfers, any additional dealings could permanently prejudice the Applicant's rights, making her title and this case meaningless.
17. The Applicant also argues that damages cannot adequately compensate for the loss of land, which is a unique asset tied to her constitutional rights under Article 40 of *the Constitution*. In addition, the applicant asserts that the balance of convenience overwhelmingly favors her.
18. This raises the question of whether this application is consistent with the decision made by Olola J. on June 9, 2022, when he dismissed an injunction application brought by the Plaintiff/Applicant in the motion dated October 26, 2020. Olola J's decision is reported as Fatma Sayed Abbas (Suing under



19. In declining to issue an injunction, this is what the learned judge observed from paragraphs 18 to 25 of the ruling:

“In the matter before me the plaintiff asserts that she was the first registered proprietor of the suit property having been so registered in the year 1986 and that she has been in possession and occupation thereof to-date. She accused the 6th defendant of fraudulently and illegally transferring the suit property to the 2nd defendant in the year 2016 and that the 2nd defendant in similar fashion transferred the same to the 1st defendant in the year 2017.

19. There was however nothing much submitted by way of evidence in support of that position. While the plaintiff told the court she was the first to be registered as the owner of the land in the year 1986, she did not exhibit a copy of the title to demonstrate her ownership of the land.
20. It was also clear to me that while the plaintiff asserts that she has been in occupation and possession of the land since 1986 and that she stands to suffer prejudice if the same is taken away from her, the plaintiff is neither in occupation nor possession of the land. That much is clear from her own annexure “MNJ-10” titled Ground and Record Status Report on plot no 461 and 608 Madeteni Settlement Scheme.
21. At paragraph 12 of her Supporting Affidavit, the plaintiff attributes the transfer of the suit land from the 6th defendant to the 2nd defendant, to a false, irregular and misleading ground report dated December 20, 2011 prepared by the then Kilifi land adjudication officer one Felix Kiteto. Subsequently, the plaintiff asserts as follows at paragraph 20 of the Affidavit:

“That subsequently, the 6th defendant/respondent prepared a fresh ground report dated September 21, 2020 by Ms Mary Muteti (which) contradicts the false, irregular and misleading ground report dated December 20, 2011 and sets the record straight on the suit property. (Marked and Annexed as “MNJ-10” is a copy of the ground report dated September 21, 2020).”

22. At page 1 on the Record Status of Plot no 608, the Report states in the relevant sections as follows:

Record Status Plot 608: In 1986, this parcel was allocated to Fatma Said Abbas, who was issued a title deed and subsequently surrendered it for re-allocation. During the allocation of 2002, this parcel was allocated to Thomas Kadzomba Shindo, and Fatma Said Abbas was never considered. Further, Thomas never complied with SFT terms and reallocation was done in 2012 to Mangi Charo Yaa vide letter of offer AS/C/115A/17 who was further discharged in 2017 and title deed issued in his favour.

23. From my reading of the report, which was meant to help the plaintiff be allocated the land, it was apparent that the suit property was under the control



of SFT. At the time of allocation, the land was allocated to someone who never complied with the SFT's terms and conditions, and the same was then reallocated to the 2nd defendant on that ground.

24. From the annexures attached to the 1st defendant's Replying Affidavit, it was evident that the 2nd defendant duly complied with the offer given to him in 2012 and that on completion of the process, he was issued with a title deed for the suit property on March 13, 2017. As the holder of such a title, the 2nd defendant had the legal authority to sell and transfer the property to the 1st defendant, as he is said to have done vide the sale agreement dated August 25, 2017.
25. Arising from the foregoing, I was not persuaded that the plaintiff had made out a prima facie case with any probability of success at the trial and/or that she stood to suffer any irreparable damage or loss unless the orders sought were granted.
20. I have included verbatim what my brother considered before declining to issue an injunction. The judge thoroughly examined the chain of title for the suit property and found that the Plaintiff/Applicant lacked the necessary documentation to establish ownership of the property; therefore, the judge declined to issue an injunction.
21. Once again, a similar application has been filed, this time alleging that Gazette Notice No. 5266, dated May 3, 2024, was issued, claiming that the title had gone missing. The Gazette Notice in question was issued in May 2024, and the current application was filed on January 31, 2025. This delay is not explained.
22. In my view, there is no difference between the current application and the one thoroughly discussed by my brother, Olola J. To me, the current application is mostly similar to what was previously addressed, with a comprehensive ruling issued by my brother judge on June 9, 2022. The introduction of the Gazette Notice does not change the facts or alter the circumstances of the case to warrant issuance of an injunction.
23. It should be noted that since the ruling was made in 2022, no steps have been taken to prosecute the matter. Instead, a notice to withdraw the suit, dated March 6, 2023, was filed but has since been rescinded; afterwards, this current application was submitted. In my opinion, the present application is an abuse of court process because it seeks to revisit an issue that has already been settled, rather than allowing the parties to proceed to a hearing on the merits.
24. The conclusion is that I did not find any merit in the Motion dated January 31, 2025. It is dismissed with costs to the 1st Defendant.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 3RD DAY OF JULY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Wanjau for the Plaintiff

Ms. Awino for the 1st Defendant



Happy: Court Assistant

