



Mtangi & 431 others v Zumzum Investments Limited (Environment and Land Case 139 of 2020) [2025] KEELC 5260 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5260 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 139 OF 2020**

**YM ANGIMA, J
JULY 10, 2025**

BETWEEN

**FONDO KARISA MTANGI 1ST PLAINTIFF
MANYESO CHARO JEFWA 2ND PLAINTIFF
KENGA NGARI KOMBO 3RD PLAINTIFF
HALIMA ABDALLAH OMAR 4TH PLAINTIFF
GITARI J. KENNEDY MICHENI & 427 OTHERS & 427 OTHERS &
427 OTHERS & 427 OTHERS & 427 OTHERS & 427 OTHERS & 427
OTHERS 5TH PLAINTIFF**

AND

ZUMZUM INVESTMENTS LIMITED DEFENDANT

RULING

1. By a notice of motion dated 05.02.2025 based upon Sections 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21) Order 24(4) and Order 51 Rule 1 of the *Civil Procedure Rules* and any other enabling provision of law the plaintiff sought an order striking out the defence and all pleadings filed by the defendant on the basis that one of the defendant's directors Abdulkarim Saleh Muhsin (Muhsin) was adjudged bankrupt on 01.07.2019 hence it constituted a criminal offence for him to act or hold himself out as a director of the defendant.
2. The application was supported by an affidavit sworn by the 1st plaintiff, Fondo Karisa, on 05.02.2025. It was the plaintiffs' contention that Muhsin was disqualified from being a director of a company by virtue of his bankruptcy hence he could not lawfully instruct the defendant's advocates to act for the company.



3. The defendant filed a replying affidavit sworn by Muhsin on 19.03.2025 in opposition to the application. He stated that he was the majority shareholder in the company and that the bankruptcy proceedings referred to had been withdrawn and a consent filed in court discharging him. It was his case that the plaintiffs who had filed a claim for adverse possession of the suit property were no longer keen to prosecute their suit since they have been engaging in delaying tactics from inception.
4. It was the defendant's case that the statement of defence and witness statement filed had nothing to do with the previous bankruptcy proceedings or company resolutions. It was the defendant's case that the instant application was frivolous and vexatious hence the same should be dismissed with costs to be borne personally by the plaintiffs' advocate.
5. When the application was listed for inter partes hearing it was directed that the application shall be canvassed through written submissions. The record shows that the plaintiffs filed submissions dated 14.04.2025 whereas the defendant's submission were dated 20.03.2025.
6. The court has perused the notice of motion dated 05.02.2025, the replying affidavit in opposition thereto as well as the material on record. The court is of the view that the main issue for determination is whether or not the plaintiff is entitled to the striking out orders sought.
7. It is evident from the plaintiffs' application and material on record that the plaintiffs are aggrieved by the defendant's defence, witness statement and other defence documents purportedly because the defendant's advocates were not validly instructed by the defendant company. It was contended that since Muhsin was adjudged bankrupt in 2019 then he could not pass any resolution to appoint a defence counsel and that he could not even file a witness statement as a witness for the company. The plaintiffs therefore wanted the defence and other defence documents on record to be struck out.
8. The court finds it strange that the plaintiff is complaining about a matter relating to the appointment of counsel and representation of the defendant company in the claim for adverse possession. There is no indication on record to show that the company, or its directors, or shareholders are aggrieved about the appointment of defence counsel or the filing of witness statements and other defence documents.
9. The court takes the view that once a defendant is sued, it is the sole responsibility of such defendant to appoint its own defence counsel and adopt a suitable defence strategy. It is the sole business of the defendant to nominate its witnesses and present relevant evidence before the trial court. The plaintiff has absolutely no business to dictate how a defendant should appoint its counsel, how it should pass its resolutions, and the defence strategy it should adopt.
10. The court is satisfied on the basis of the material on record that Muhsin has since been discharged as a bankrupt hence the plaintiffs' application must fall flat on its face. Moreover, the court is not aware of any law which would bar a company from calling as a witness someone who is an undischarged bankrupt. A witness does not have to be a director, shareholder or employee of the company. In a claim for adverse possession, a company can even call a complete stranger as a witness if it so chooses.
11. If the plaintiffs consider that Muhsin may have committed any criminal offences under the [Companies Act](#) or any other law that would have nothing to do with the claim for adverse possession pending before this court. The plaintiffs are at liberty to pursue his prosecution through the relevant law enforcement agencies rather than attempt to scuttle the company's effort to defend the civil suit against it.
12. The court has noted from the material on record that the plaintiffs do not appear to be in a hurry to prosecute their claim for adverse possession which has been pending for about 5 years now. They appear to have concentrated on making frivolous objections and applications to delay the prosecution



of the suit. The court frowns upon such diversionary tactics which inevitably result in wastage of limited judicial time and other resources.

13. The upshot of the foregoing is that the court finds absolutely no merit in the plaintiffs' said application. As a result, the court makes the following orders for disposal of the matter;
- a. The plaintiffs' notice of motion dated 05.02.2025 is hereby dismissed with costs.
 - b. The plaintiffs shall pay the defendants costs of the application assessed at the Kshs. 30,000 only within 30 days from the date hereof in default of which the suit shall stand struck out.
 - c. The suit shall be mentioned on 14.10.2025 for pre-trial directions, if applicable.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 10TH DAY OF JULY, 2025.

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Y. M. ANGIMA.*

JUDGE.

In the presence

Gillian – Court Assistant

No appearance for the plaintiffs

Ms. Osewe for the defendants

