



Mangale & 2 others (In their own Capacity and on Behalf of all Trustees of Masjid Daarul Arqam, Daarul Istiqama, Daarul Ghurabah and Daarul Tauhid) v Jefa & 2 others (Environmental and Land Originating Summons E15 of 2023) [2025] KEELC 4980 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4980 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E15 OF 2023

JO OLOLA, J

JULY 4, 2025

IN THEIR OWN CAPACITY AND ON BEHALF OF ALL TRUSTEES OF MASJID DAARUL ARQAM, DAARUL ISTIQAMA, DAARUL GHURABAH AND DAARUL TAUHID

BETWEEN

RUWA MANGALE 1ST APPLICANT

SUBIRA SAID KANWA 2ND APPLICANT

MWINYIHAJI HAMISI MWAKUNYUA 3RD APPLICANT

IN THEIR OWN CAPACITY AND ON BEHALF OF ALL TRUSTEES OF MASJID DAARUL ARQAM, DAARUL ISTIQAMA, DAARUL GHURABAH AND DAARUL TAUHID

AND

MOSE ALI JEFA 1ST RESPONDENT

MWASHAME SAID TUNU 2ND RESPONDENT

FATUMA TUNU SAID 3RD RESPONDENT

RULING

1. By the Notice of Motion dated 16th December, 2024, the three (3) Respondents in the Originating Summons pray for orders that:
 1. Spent
 2. Spent



3. Pending the hearing and determination of this suit, this Honorable Court be pleased to grant an injunction restraining the Applicants Ruwa Mangale Nyenye, Subira Said Kanwa and Mwinyihaji Hamisi Mwakunyua whether by themselves, their agents and/or servants from constructing, transferring, selling, interfering, alienating, disposing or otherwise dealing with the suit property known as Plot No. Mtongwe/II/114 bearing the four Mosques namely Masjid Daarul Aqam, Daarul Istiqama, Daarul Ghurabaah and Daarul Tauhid;
 4. This Honorable Court be pleased to discharge set aside the order of injunction issued on 15.3.2024 herein restraining the Respondents whether by themselves, their agents, representatives and/or servants from interfering with the Applicant's possession, management and administration and/or dealing with the suit properties being Masjid Daarul Aqam, Daarul Istiqama, Daarul Ghurabaah and Daarul Tauhid, be maintained until the hearing and determination of this suit;
 5. In the alternative, this court be pleased to order that status quo all that parcel of land known as Plot No. Mtongwe/II/114 bearing the four Mosques namely Masjid Daarul Aqam, Daarul Istiqama, Daarul Ghurabaah and Daarul Tauhid, be maintained until the hearing and determination of this suit; and
 6. Costs of this application be provided for.
2. The application which is supported by an Affidavit sworn by Fatuma Yunu Said (the 3rd Respondent) is premised on the grounds inter alia, that;
 - i. The four Mosques and associated institutions sit on all that parcel of land known as Plot No. Mtongwe/II/114;
 - ii. The Respondents are the beneficial owners of the suit property being the heirs of the estate of the registered proprietor thereof;
 - iii. The Respondents have possession of the Certificate of title to the property and have for the longest time been occupying and residing on part of the property with their families as their residential home;
 - iv. The Respondents are by law entitled to administer the suit property as opposed to the Applicants who have no lawful authority to administer or deal with the suit property;
 - v. The Applicants are undertaking unlawful constructions on the suit property yet the rights of the parties have not been determined; and
 - vi. The orders of injunction issued on 15.3.2024 should be set aside as the Applicants deliberately and fraudulently concealed material facts from the court.
 3. The 1st Applicant – Ruwa Mangale Nyenye is opposed to the application. In his Replying Affidavit sworn on 26th February, 2025, the 1st Applicant avers that contrary to the Respondents' contention, the four Mosques are located in different parcels of land in Vijiweni, Mtongwe, Sakarabu and Magwangwani within Likoni Constituency.
 4. The 1st Applicant further avers that the Respondents have misled the court by claiming to be the beneficial owners of the suit property and that they have failed to avail any evidence to prove that they are entitled to the same.



5. I have carefully perused and considered both the application and the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
6. By their application before the court, the Respondents in the Originating Summons have urged the court to issue an order of injunction restraining the Applicants in the Originating Summons from constructing, transferring, selling, interfering (with), alienating, disposing or otherwise dealing with the suit property which they describe as Plot No. Mtongwe/II/114 and which, according to the Respondents, bears the four mosques namely Masjid Daarul Aqam, Daarul Istiqama, Daarul Ghurabaah and Daarul Tauhid.
7. The Respondents have further urged the court to set aside and/or discharge the orders of injunction issued herein on 15th March, 2024 which orders restrained the Respondents from interfering with the Applicant's possession, management and administration of the suit properties. In the alternative, the Respondents pray that an order of status quo be issued in regard to the property bearing the four mosques.
8. The principles to be taken into consideration for the grant of interim injunctions were long settled in the celebrated case of *Giella –vs- Cassman Brown & Co. Ltd (1973) EA 358* where it was held that:

“The conditions for the grant of an interlocutory injunction are now well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the 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 a balance of convenience.”
9. In the matter herein, the Respondents contend that the four mosques and associated institutions sit on one parcel of land known as Plot No. Mtongwe/II/114. It is their case that they are the beneficial owners of the said property being the heirs of the estate of the registered proprietor thereof.
10. From the material placed before the court, it was apparent that when the Applicants instituted the Originating Summons herein, they did also file a Notice of Motion application dated 16th October, 2023 wherein they sought an order of a temporary injunction restraining the Respondents from interfering with their possession, management and administration and/or dealing with the suit properties wherein the four mosques were situated until the hearing and determination of the Originating Summons.
11. In addition, the Applicants sought an order directing the Kadhi's court to stop any further proceedings in Mombasa Kadhi's Court Miscellaneous Application No. E049 of 2023 and E001 of 2023 pending the hearing and determination of the Originating Summons.
12. While the Respondents in their application before the court refer to orders issued on 15th March, 2024 which they urge the court to set aside and/or discharge, I was unable to find any orders issued on the said date. From a perusal of the record, it was apparent that the Applicant's Motion dated 16th October, 2023 came up for hearing inter-partes on 11th March, 2024. As at that time, the Respondents had not filed any response to the Application and the Court being satisfied that they had been served proceeded to issue the orders as sought by the Applicants.



13. In their application before the court, the Respondents have not mentioned anything in respect to their failure to respond to the said application save for their contention that the Applicants misled the court into issuing the said orders.
14. From a perusal of the material placed before me, it is apparent that contrary to the Respondents' contention that the four mosques are situated in Plot No. Mtongwe/II/114, the mosques are actually situated in four different areas being Vijiweni, Sakarabu, Kona Mpya and Philadelphia Magwangani areas in Likoni. In addition, I was unable to find anything to demonstrate that the Respondents had any beneficial interest in Plot No. Mtongwe/II/114 wherein they claim the four mosques are situated.
15. Having failed to explain their failure to respond to the Applicants' application which led to the issuance of the orders granted on 11th March, 2024 and having failed to demonstrate the interest they have in the four parcels of land in which the four mosques are situated, I was not persuaded that the Respondents had made out a prima facie case with a probability of success at the trial.
16. In the premises, I was not persuaded that there is any merit in the Motion dated 16th December, 2024. The same is dismissed with costs to the Applicants in the Originating Summons.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 4TH DAY OF JULY, 2025

.....

J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

No appearance for the Applicants

Mr. Kongere Advocate for the Respondents/Applicant

