



REPUBLIC OF KENYA



KENYA LAW
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**Masya v Musya & 5 others (Environment and Land Case E026 of 2025)
[2025] KEELC 6020 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6020 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E026 OF 2025
EK MAKORI, J
SEPTEMBER 17, 2025**

BETWEEN

LUKAS MASYA PLAINTIFF

AND

ANTONY MAUNDU MUSYA 1ST DEFENDANT

ALFONSE KITULYA MUOKI 2ND DEFENDANT

FRANCIS TITUS MUTULU MWANIKI 3RD DEFENDANT

JAMES MAKENZI NDAMBUKI 4TH DEFENDANT

THE REGISTRAR OF LANDS - LAMU 5TH DEFENDANT

THE HON ATTORNEY GENERAL 6TH DEFENDANT

RULING

1. The application dated April 2, 2025, requested the following reliefs:
 - a. Spent.
 - b. Pending the inter-partes hearing, this Honourable Court be pleased to issue an order of injunction restraining the 1st – 4th Respondents, their agents, servants, assignees, or any person acting under their authority from alienating, transferring, subdividing, charging, leasing, or otherwise dealing with land parcels Lamu/Lake Kenyatta I/9895–9909 situate in Mpeketoni, Lamu County.
 - c. Pending the hearing and determination of this suit, this Honourable Court be pleased to issue an order of injunction restraining the 1st – 4th Respondents, their agents, servants, assignees, or any person acting under their authority from alienating, transferring, subdividing, charging, leasing, or otherwise dealing with land parcels Lamu/Lake Kenyatta I/9895–9909.



- d. The costs of this application should be provided for.
2. The application is supported by the attached affidavit sworn by Lucas Masya on April 2, 2025.
 3. The application is opposed. There is a replying affidavit deposited by Anthony Maundu Musya, sworn on May 7, 2025.
 4. The application was meticulously reviewed based on written submissions. I acknowledge the comprehensive submissions from counsel for the applicant, Mr. Mutethia, and from the counsel for the 1st to 4th respondents, Ms. Mwania, both of whom cited relevant laws and judicial precedents to support their arguments regarding the issuance of temporary injunctions.
 5. The Honorable Attorney General for the 5th and 6th respondents did not take part in this application.
 6. Based on the materials and submissions before me, the issues I present for the court's consideration are whether the applicant has met the requirements for a temporary injunction and who should bear the costs of the application.
 7. The applicant argues that the tripartite test in *Giella v Cassman Brown* [1973] EA 358 has been met. The applicant has established a prima facie case with a reasonable chance of success. Second, the applicant has shown that they would otherwise suffer irreparable harm that damages cannot adequately remedy. Third, if the court is uncertain, it will decide the application based on a balance of probabilities, which, in the applicant's view, tilts in their favor.
 8. The applicant claims that the respondents divided the suit property into fourteen (14) portions, Lamu/Hindi Magogoni/9895-9909, to dispose of it unlawfully. The restriction on the suit property he had placed was lifted without the consent of the applicant or the members listed in Annexure B. The respondents' assertion that the applicant is not a member is unsubstantiated, as they have failed to prove how or when the applicant and others ceased to be members. The 1995 Group Membership List (Annexure F) includes both the respondents and the applicant, yet they have not disavowed it.
 9. The applicant states that if the orders sought are denied, they and the represented members will face a permanent loss of the suit property. Monetary compensation would be inadequate, as the land holds unique value. The land was purchased to unite the Kamba community living in Mpeketoni. Through its membership, relationships have developed and strengthened.
 10. Regarding the concept of the balance of convenience, the applicant asserts that Annexure F is a copy of the Group's list of members as of 1995. The list includes the respondents. The respondents have not demonstrated their claim that the applicant and members listed in Annexure B are not members of the Group. Furthermore, they have not disavowed Annexure F – the list of members from 1995. Therefore, in light of the above, the applicant argues that the status quo should be maintained to prevent irreversible harm.
 11. The applicant argues that, having established a meritorious case, they are entitled to costs.
 12. The 1st to 4th respondents argue that the applicant must provide substantial evidence showing that the respondent violated their rights. They contend that the applicant has not established a prima facie case with a high likelihood of success, as the property in question is registered to a community-based organization, Ukai Self Help Group, and the applicant's name does not appear on the membership lists from 2014 to the present.
 13. The 1st to 4th respondents argue that the applicant has failed to establish a prima facie case with a high likelihood of success for the following reasons: the property in question is registered to Ukai Self Help



Group. This community-based organization is appropriately registered and maintains clear records of its members. The registration is renewed annually, and each renewal includes a list of members, which is referenced and attached as annexure AMM-2 by the respondents in their replying affidavit. The applicant's name does not appear on these lists from 2014 to the present.

14. Further, the applicant has not clearly explained the capacity in which he is bringing this suit or seeking these orders. He also fails to provide evidence that any of his rights are being violated by the respondents' actions as alleged. In fact, the applicant seeks these orders based on the fact that he previously lodged a restriction on the property, which he alleges was unlawfully lifted by the 5th respondent. He has not clarified in what capacity he lodged the restriction, leaving the 5th respondent with no choice but to lift it.
15. The 1st to 4th respondents argue that it is clear from the above that the applicant has no connection to the suit property and cannot be considered to have a prima facie case with a likelihood of success.
16. They also argue that the applicant has not demonstrated any prejudice he might face if the orders he requests are not granted, especially since it is unclear what connection he has to the property in question. He is not a member of the registered owner of the land, as explained above.
17. The 1st to 4th respondent further states that, since no relationship is shown between the applicant, the suit property, or the registered owner, there are no justifiable grounds to restrain the respondents as prayed in the application, and that justice would be better served by dismissing the application rather than granting it.
18. The respondents argue that the conditions outlined in the Giella Case (*supra*) are sequential; the first condition must be satisfied before considering the second, and the third condition is only evaluated if the court is unsure. When an applicant fails to establish a prima facie case, issues of irreparable harm and the balance of convenience do not need to be addressed. In this case, the applicant has not demonstrated a prima facie case with a likelihood of success that justifies granting the relief sought in his application.
19. The 1st to 4th respondents state that, additionally, in the unlikely event the applicant proves membership in the Ukai Self-help Group and/or ownership of the suit property during the hearing, he will have the opportunity to seek compensation. Therefore, there is no evidence that the applicant will suffer irreparable harm that cannot be remedied with damages.
20. Lastly, the 1st to 4th respondents also provide a background of several other matters filed in different courts concerning the same suit property: Mpeketoni PMCS No. E01 of 2024, Malindi ELC Appeal No. 10 of 2021, Mpeketoni PMCC E03 of 2020, Malindi ELC Case No. 142 of 2013, Malindi High Court Misc.Application No. 44 of 2009, SPM Civil Suit No. 212 of 2009, and Lamu SRM Court Civil Suit No. 25 of 2011—all of which were dismissed with costs for various reasons. The current suit seeks the same orders as those sought in the previous suits, which have been heard and decided by different courts.
21. It is the view of the 1st to 4th respondents that the application should be dismissed with costs.
22. The principles for the grant of interlocutory injunction, as submitted by the parties in this matter, are as held in the leading decision of Giella Case (*supra*):

“The Applicant should satisfy the Court that he has a prima facie case with a probability of success. Secondly, he stands to suffer irreparable loss or injury which cannot be compensated by damages, and thirdly, if the Court is in doubt, it should decide on a balance of convenience.”



23. The first issue to determine then is whether the applicant has proved a prima facie case with the probability of success as held in *Mrao v First American Bank of Kenya and 2 others* [2003] KLR 125 as follows:

“A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case.’ It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation in rebuttal from the latter.”

24. The principles outlined in the *Giella Case* (supra) should be addressed sequentially, as affirmed in *Kenya Commercial Finance Company Ltd v Afraha Education Society* [2001] 1 EA 86, and cited in *Karen Bypass Estate Ltd v Print Avenue and Company Ltd* [2014] eKLR:

“So that the second condition can only be addressed if the first one is satisfied, and when the court is in doubt, then the third condition can be addressed.”

25. Based on the materials and submissions before me, the applicant and whoever he claims to represent have not demonstrated that they are members of Ukai Self Help Group, let alone that they authorized him to file this suit.

26. The 1st to 4th respondents have rebutted that the 1995 list provided by the applicant was altered long ago, and that since 2014, he and those he claims to represent have never been members of the Ukai Group, and that the membership list changes every year.

27. That being the case, the applicant has failed to demonstrate the extent of his stake in the Ukai Self Help Group, which owns the disputed property, and that the 1st to 4th respondents are trustees.

28. In law, there is a process for how a Self-Help Group can sue—and be sued—through its officials. I agree with the conclusion by Munyao J. in *Kipsiwo Community Self Help Group v Attorney General and 6 others* [2013] e KLR. This is what is stated:

“Kipsiwo Self Help Group had no capacity to institute action in its own name. A person recognized in law had to sue on behalf of members of Kipsiwo Self Help Group, and such members had to be named and identified with precision. The person bringing action has to demonstrate that he has permission to bring the action on behalf of the members of the Group, or on behalf of the people he seeks to represent if it is a representative suit. The importance of this, is so as to recognize the persons who seek legal redress, and so that orders are not issued in favour or against people who cannot be precisely identified. This may look minor, but it is extremely significant. In litigation, rights and duties will be imposed on the litigants. If the court does not know who the litigants are, then it becomes impossible for the court to enforce its own orders, for it will be clear, who the beneficiary of the order was, or who had obligation to obey or enforce such order.”

29. The learned judge in the same case proceeded to state:

“It is clear that Self Help Groups are not incorporated bodies. In fact, I know of no law that recognizes them or incorporates them. They are probably the brain – child of administrators who at times had to come with a tool to identify specific groups of people that needed assistance or needed to undertake projects together. They seem to have helped harness resources at community level. The only problem is that the government has not put in place any legal framework under which they can be registered and managed. Such groups,



in absence of a legal framework, indeed stand the risk of being declared unlawful societies as held in the case of Dennis Olooligero.....Self Help Groups having no legal personality, cannot therefore institute proceedings in their own name”.

30. In this case, the applicant is neither an official nor a member of the Ukai Self-Help Group. The individuals he claims authorized him to sue have also not been proven to be members. The final orders he seeks will affect the entity called Ukai Self-Help Group, which he has not demonstrated he belongs to or that he is a member of; at least the 1st to 4th respondents have shown that they are trustees. The applicant is a stranger to the Ukai Self-Help Group—his ability to sue is therefore questionable. He cannot claim to sue on behalf of a group he is neither an official nor a member of.
31. The 1st to 4th respondents have also shown and demonstrated the existence of several other similar suits concerning the same suit property heard over a period of time. The applicant has not rebutted these allegations. If such suits exist, filing another one over the same subject matter amounts to abuse of the court process – this issue can be reserved for resolution at the hearing of the main suit.
32. At the end, the application dated April 2, 2025, is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 17TH DAY OF SEPTEMBER, 2025.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Mutethia for the Applicant

Ms. Mwanja for the 1st to 4th Respondents

Mr. Lusamba for the 4th and 5th Respondents

Happy: Court Assistant

