



REPUBLIC OF KENYA



KENYA LAW
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**Ndungu v Ongoma (Environment and Land Case E023 of 2025)
[2025] KEELC 6106 (KLR) (22 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6106 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E023 OF 2025
FM NJOROGE, J
SEPTEMBER 22, 2025**

BETWEEN

ESTHER NJERI NDUNGU APPLICANT

AND

CALEB OTIENO ONGOMA RESPONDENT

RULING

1. The applicant is suing the respondent by way of an originating summons and she has filed an undated application on 22/5/2025. The orders sought in that notice of motion were tailored as follows: -
 - a. That the 1st respondent herein by himself, servant's, family members, and or agents be temporarily restrained from trespassing, intermeddling, encroaching, construction and/or use of the applicant's property that is Lamu/Lake Kenyatta II/1686 1687 and 1688 (Original Number 472) Settlement Scheme situated at Mpeketoni within Lamu county pending the hearing and determination of this suit;
 - b. That the injunctive orders be enforced by the Officer Commanding Kibaoni Police Station and DCIO Mpeketoni;
 - c. That the cost of this application be borne by the first respondent.
2. The application is supported by the grounds set out at the foot thereof and in the supporting affidavit of the plaintiff sworn on 19th May 2025. Briefly, they are as follows: that the applicant is the owner of the suit land. The 1st respondent has illegally commenced construction on the property. The applicant herein has reported the matter to Kibaoni Police Station but efforts to stop the 1st respondent from conducting the said construction have been in vain. It is also stated that the applicant herein stands to suffer substantially should the 1st respondent not be enjoined carrying on his activities on the suit land.



3. The 1st respondent filed a replying affidavit which he swore on 4th May 2025. His defence is that he is the proprietor of Lamu/Lake Kenyatta II/472; that it is not true that there is any valid judgment of the Mpeketoni Court capable of enforcement by way of a vesting order; that the judgment and all consequential orders in Mpeketoni ELC 013 Of 2021 was set aside on 18th October 2024 and therefore the land reverted back to the first defendant; that the 1st defendant is the one who is in physical occupation of the suit land through his caretakers. He further states that on 19th September 2024 he made a routine visit upon the suit property whereupon he found a freshly constructed mud structure which was unoccupied, with nobody on site, and that he reported the matter to Kibaoni Police Station vide OB Number 07 of 19th September 2024; that even as at 2018 he was still in physical position of the suit land; that it is thus incorrect that the applicant has been living on the land for 24 years; that the applicant only filed and pursued the adverse possession case before the Magistrate's Court at Mpeketoni after the 1st defendant settled the Discharge Of Charge fees with the Settlement Fund Trustees in 2018. The 1st defendant also avers that the suit for adverse possession before the Mpeketoni Magistrate was withdrawn and that it does not exist. He accuses the applicant of having made earlier unsuccessful attempts in 2006 to appropriate his land. He denies having ever sold the land to any person including the applicant and accuses the applicant of forging a sale agreement. He denied having induced public officers to favour him in the dispute. He points out discrepancies between the claim made by the applicant in the Mpeketoni Magistrate's Court, that she occupied the land in 1999, in contrast with a claim herein to the effect that she occupied it in 1978, and he prays that the application be dismissed. The 2nd and 3rd defendants did not participate in the hearing of the application. The application was disposed of by way of written submissions. The 1st defendant filed submissions dated 10th June 2025.

Analysis And Determination.

4. I have considered the application, the response as well as the written submissions filed by the parties. The only issue that arises in the application is whether this court should issue an injunction restraining the 1st defendant from interfering with the suit land pending the hearing and determination of the suit. For this to happen the applicant has to convince the court that she has a prima facie case and also that she would suffer loss that will not be compensable by way of damages in the event the orders are not issued.
5. It must be noted that the 1st respondent has exhibited a copy of a Title Deed in his name, to plot number Lamu/Lake Kenyatta II/472 apparently issued on 28th August 2006. However, a copy of the certificate of official search dated 24th March 2025 shows that his title was issued on 13th February 2025 as the 11th entry on the register of title.
6. The applicant on the other hand asserts that she is the absolute owner of plot numbers 1686, 1687 and 1688 which emanated from a subdivision of Lamu/ Lake Kenyatta II/ 472 which is the same land claimed by the 1st respondent. She avers that she acquired the sale property by virtue of adverse possession as per the judgment and order issued on 14th June 2022 by the Mpeketoni Principal Magistrate in Case Number 13 Of 2021 in which she was the plaintiff and the 1st defendant was the defendant. She has exhibited a copy of a mutation showing subdivision of that original Parcel No 472. She has also exhibited an agreement between her and the 1st defendant dated 17th February 1997. That agreement appears to be for the sale by the 1st defendant of the suit land to her. A copy of a receipt dated 21st May 1997 issued by the District Land Education Officer being for Land Deposit and Conveyance is also exhibited. Another receipt is also part of her evidence. She states that she paid the said sums on those receipts in the name of the 1st defendant. She asserts that after that judgment was issued by



the magistrate, title was issued in her name and she conducted the subdivision that led to the above mentioned subtitles. She asserts that she and her family have been in the suit since the year 1997 after they purchased the suit land from the 1st respondent. She adds that owing to the foregoing, the title issued in the name of the 1st respondent wrongfully.

7. On his part the 1st respondent has exhibited a ruling of an unclear date issued in Mpeketoni ELCE 013 of 2021 by Israel Ruhu SRM. That ruling was in favour of the 1st respondent herein. He had applied for setting aside of the judgment in that matter, ostensibly in order for him to be able to secure leave and file a response to the originating summons therein, his grievance being that he was condemned unheard. The magistrate allowed his application. He also granted him leave to defend the suit and to file a response to the originating summons within 30 days from the date of the ruling, failure to which his application would stand dismissed. He was also to pay the respondent thrown away costs of Kenya Shillings 20,000/- within 30 days from the date of the ruling. Nothing has been said y any of the parties about compliance with these orders of the Senior Resident Magistrate. However, the ruling the Magistrate gave appears to recognize that the applicant had already subdivided the original plot before the application for setting aside judgment was filed. I think it is clear from the ruling of the Magistrate that the 1st respondent was not granted any leave to evict the applicant herein.
8. Having examined the material before me I find that the applicant has established a prima facie case. I also find that owing to the nature of the case before the Magistrate's court and the present case, if the actions of the 1st respondent are not stopped at this stage, the applicant may suffer loss that may not be capable of compensation by way of damages. Therefore, I allow the Notice of Motion application filed on 22nd May 2025 in terms of prayer number 3 thereof. The costs of the application shall be in the cause. The parties shall comply with Order 11 of the Civil Procedure Rules without fail, the plaintiff within 21 days and the defendant within 21 days of the expiry of the plaintiff's period granted herein, and the matter shall be listed for mention for issuance of a hearing date on 19/11/2025.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 22ND DAY OF SEPTEMBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

