



REPUBLIC OF KENYA



KENYA LAW
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**Mkuva v Baya & 6 others (Environment & Land Case
E059 of 2024) [2025] KEELC 3948 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3948 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E059 OF 2024**

YM ANGIMA, J

MAY 15, 2025

BETWEEN

RISHARD HELA MKUVA PLAINTIFF

AND

KATANA BAYA 1ST DEFENDANT

RAMADHAN KAINGU 2ND DEFENDANT

REMMY MWANZO MWANDZOMARI 3RD DEFENDANT

INSPECTOR GENERAL OF POLICE 4TH DEFENDANT

MINISTRY OF LANDS 5TH DEFENDANT

ATTORNEY GENERAL 6TH DEFENDANT

NATIONAL LAND COMMISSION 7TH DEFENDANT

RULING

1. By a notice of motion 28.06.2024 filed pursuant to Sections 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21) and Order 40 Rules 1 and 2 of the Civil Procedure Rules the plaintiff sought an order to restrain the defendants from, inter alia, trespassing upon, alienating, destroying or literally occupying Plot No Mombasa/Majaoni Scheme/909 (the suit property).
2. The plaintiff pleaded that although he was the absolute registered proprietor of the suit property the defendants had illegally entered and occupied the same and erected some structures thereon. It was further pleaded that the 1st – 3rd defendants (the defendants) intended to sub-divide and dispose of the suit property. It was the plaintiff's case that despite making various reports to Kiambeni Police Station no positive action had been taken to remove the defendants since 2008.



3. It was the plaintiff's case that if the defendants were allowed to continue remaining, trespassing, and erecting structures on the suit property he stood to suffer irreparable loss and damage. It was further his case that despite employing the criminal justice system against the defendants he had been unable to recover his property.
4. The defendants filed a replying affidavit sworn by Remmy Mwanzo in opposition to the application. The defendants disputed that the plaintiff was the legitimate owner of the suit property and pleaded that the plaintiff's title was obtained fraudulently. The 3rd defendant pleaded that it was his wife's late grandmother who was the original allottee of the suit property and that she only sold a small portion of 50 ft by 100ft to the plaintiff and not the entire suit property.
5. The defendants denied being trespassers or illegal occupants on the suit property and pleaded that they have always been lawfully in occupation even long before the plaintiff bought a small portion thereof. The defendants denied any intention on their part to sub-divide and sell the suit property since they and their families were still in occupation. It was their case that the plaintiff had failed to demonstrate the principles for the grant of the interim injunction sought and prayed for dismissal of the application.
6. The court has considered the material and submissions on record. The main question for determination is whether or not the plaintiff has satisfied the principles for the grant of the interim injunction sought. It is evident from the material on record that the defendants have been occupants of the suit property for a long time. They pleaded that they have always been lawfully in occupation of the suit property for several years. The plaintiff's own affidavit stated that he had made numerous reports to Kiembeni Police Station between 2008 and 2023 for removal of the defendants from the suit property without success.
7. It is also evident from the material on record that the defendants have a competing claim against the plaintiff over the suit property. The defendants pleaded that the suit property belonged to their deceased relative and that the plaintiff must have fraudulently acquired registration thereof. The court is of the view that such a dispute can only be resolved upon a full hearing of the suit.
8. The court also takes the view that a restraining injunction would not be an effective remedy against the defendants who have been in occupation of the suit property for so many years. There would be no way of restraining them from trespassing or occupying the suit property without evicting them. The plaintiff must have appreciated that the only effective remedy against the defendants was either a mandatory injunction or eviction order. That is why they included such prayers in his plaint. It has been held that a mandatory injunction or eviction order ought not to be granted at the interlocutory stage before the suit is heard save in exceptional cases.
9. The court is thus of the opinion that the reliefs sought in the notice of motion dated 28.06.2024 are of a drastic and final nature hence they can only be granted upon a full hearing of the suit on merit. It would, therefore, follow that the court is not satisfied that the plaintiff has made out a case for the grant of the mandatory injunction sought at the interim stage. As such, the court is not inclined to grant the same.
10. The upshot of the foregoing is that the court finds no merit in the plaintiff's application for interim orders. As a consequence, the court makes the following orders for disposal of the said application;
 - a. The notice of motion dated 28.06.2024 is hereby dismissed in its entirety with costs in the cause.
 - b. The suit shall be mentioned on 25.06.2025 for pre-trial directions.

Orders accordingly



RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 15TH DAY OF MAY, 2025.

In the presence of:

Gillian - Court assistant

Mr. Omwenga for plaintiff

No appearance for the 1st – 3rd defendants

Mr. Penda for the AG for the 4th- 6th defendants

No appearance for the 7th defendant

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Y. M. ANGIMA

JUDGE

