



REPUBLIC OF KENYA



**Croze alias Nani Croze v Huth & 5 others (Environment & Land Case
E111 of 2024) [2025] KEELC 3789 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3789 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E111 OF 2024**

EK MAKORI, J

MAY 8, 2025

BETWEEN

CHRISTIANE FRANZISKA CROZE ALIAS NANI CROZE PLAINTIFF

AND

MICHAEL IAIN HUTH 1ST DEFENDANT

SARAH ELIZABETH HUTH 2ND DEFENDANT

MWALIMU NGUYO NDANDI 3RD DEFENDANT

OFFICE OF THE LAND REGISTRAR 4TH DEFENDANT

THE COUNTY SURVEYOR - KILIFI COUNTY 5TH DEFENDANT

THE ATTORNEY GENERAL 6TH DEFENDANT

RULING

1. Application dated 6th November, 2024, and filed on the same date, seeks the following orders:
 - i. That an order of temporary injunction be and is hereby issued restraining the 1st, 2nd and 3rd Defendants whether by themselves, agents, servants, proxies, or employees from entering, taking possession, trespassing or otherwise dealing in all those properties occupied and registered in the name of the Plaintiff comprising L.R. No. Gede/Dabaso/630 and L.R. No. Gede/Dabaso/641 pending the hearing and determination of the suit.
 - ii. That an order of temporary injunction be and is hereby issued prohibiting any dealings, including subdivisions, sale, charging, transfer, assignment, or developments on Titles registered at the Kilifi Lands Registry as L.R. No. Gede/Dabaso/1009, Gede/Dabaso/1010, and Gede/Dabaso/1011 pending hearing and determination of the suit.
 - iii. Costs to be provided for.



2. The Applicant avers that he is the registered and lawful owner of properties L.R. No. Gede/Dabaso/630 and Gede/Dabaso/641 (the suit properties). The Applicant purchased the Suit Properties from the late Guyo Dadi in 1997 and 1999, respectively, paid the full purchase price, and took possession. The late Guyo Dadi owned the original property L.R. No. Gede/Dabaso/455, which, upon subdivision in 1997, yielded L.R. Nos. Gede/Dabaso/629 and 630, and the title deed relating to Gede/Dabaso/455 were closed. The late Guyo Dadi transferred property L.R. No. Gede/Dabaso/630 to the Applicant in 1997 and retained L.R. No. Gede/Dabaso/629.
3. In 1999, the late Guyo Dadi again subdivided L.R. No. Gede/Dabaso/629 into two (2) parcels, namely L.R. No. Gede/Dabaso/641 and 642, and thereafter sold and transferred property L.R. No. Gede/Dabaso/641 to the Plaintiff. Guyo Dadi would later die on 29th September, 2007, more than 8 years after selling and transferring the Suit Properties to the Applicant.
4. After acquiring the Suit Properties, the Applicant took possession and remained in quiet possession until sometime in 2014 when the 1st and 2nd Defendants claimed an interest in the Suit Properties on the pretext that they held a title deed over the same parcels of land. The title deed held by the 1st and 2nd Defendants is L.R. No. Gede/Dabaso/1010. The Applicant took steps to verify the 1st and 2nd Defendants' claims and learned that:
 - a. Upon the death of Dadi Guyo, his son, the 3rd Defendant herein, took out Malindi HC Succession Cause No. 42 of 2009; In the Estate of Guyo Dadi alias Nguyo Ndadi Said and sought a Grant of Probate Intestate in respect of his father's estate;
 - b. In applying for the Letters of Grant, the 3rd Defendant represented to the Court that he was the sole beneficiary and he intended to carry out Succession over the only asset under the estate being L.R. No. Gede/Dabaso/453;
 - c. The original title Gede/Dabaso/455, from which the Suit Properties came from and which was long closed following subdivision in 1997, was not listed as an asset under the estate of the late Guyo Dadi; and
 - d. Perusal of the Court record revealed that since the filing of the probate case, no steps were taken to obtain Letters of Grant or for Confirmation of Grant, and the case was dismissed for want of prosecution and the file closed on 29th May, 2018.
5. Although there was no Letters of Grant or Certification of Confirmation of Grant issued to the 3rd Defendant over the estate of the late Guyo Dadi, the 3rd Defendant initiated and caused to be prepared mutation and sub-division forms in 2011, purportedly in respect of property L.R. No. Gede/Dabaso/455 and obtained three (3) title deeds, being Gede/Dabaso/1009, 1010, and 1011. The 3rd Defendant subsequently transferred Gede/Dabaso/1010 to the 1st and 2nd Defendants herein and retained under his name the other two (2) title deeds.
6. The Applicant raised the matter and lodged complaints with the police and the Lands Registrar for assistance, but no action was taken to cancel the title deeds fraudulently processed by the 3rd Defendant.
7. Without the action of the police to arrest and prosecute the perpetrators of the alleged fraud and the 4th Defendant's failure to act on the complaints raised by the Applicant, the 1st, 2nd and 3rd Defendants grew confident and sometime in late 2024 visited the Applicant's suit properties and threatened to evict her from the Suit Properties claiming that there are the owners of the land by virtue of the titles Gede/Dabaso/1009, 1010 and 1011, which title deeds, the Applicant asserts were acquired through



fraud. To protect her interest in the Suit Properties, the Applicant has approached this court seeking for the orders stated above.

8. The 1st and 2nd Defendants have filed a Notice of Preliminary Objection dated 12th March 2025 to the application and suit by the Applicant, contending that the suit is statute-barred. The 4th, 5th, and 6th Respondents have filed Grounds of Opposition dated 22nd November 2024, claiming the subdivisions were regularly and procedurally done. The 3rd Defendant has never entered an appearance despite being served.
9. On 13th March, 2025, the 1st and 2nd Respondents' Counsel sought time to file a Replying Affidavit and Defence to the suit, and the Court gave directions for filing Submissions upon filing the Replying Affidavit. As of 28th April, 2025, the 1st and 2nd Respondents had not filed or served the Replying Affidavit.
10. From the materials presented to me, I outline the following issues for the determination of this court: Whether the Notice of Preliminary Objection filed by the 1st and 2nd Respondents possesses merit. Whether based on the evidence and materials submitted before the court, the Plaintiff has fulfilled the conditions necessary for the granting of a temporary injunction, and who ought to bear the costs?
11. The principles upon which this court is invited to determine the merit of a notice of PO were set out in the oft-cited case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696. This case established the criteria for a PO, which include raising a pure point of law, demonstrating the correctness of all the facts pleaded by the other side, and the absence of any fact that needs to be ascertained. The court will consistently adhere to these principles in its ruling.
12. The Court of Appeal in *Attorney General & Ministry of State for Immigration & Registrar of Persons v Andrew Maina Githinji & Zachary Mugo Kamunjiga* [2016] KECA 817 (KLR) reiterated the same position on what would constitute a PO and held as follows:

“The test to be applied in determining whether the appellants’ Preliminary Objection met the threshold or not is what Sir Charles Newbold set out above in the *Mukisa Case* (supra). That is first, that the Preliminary Objection raises a pure point of law, second, that there is demonstration that all the facts pleaded by the other side are correct; and third, that there is no fact that needs to be ascertained.”
13. The thrust of a PO in this matter rests squarely on the jurisdiction of this court, as held by Nyarangi J.A. in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity, and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
14. A PO rests on the proposition that when raised, its fundamental achievement will influence the disposition of a matter because it raises pure points of law. It also underscores the need for prudent time management as a court resource by summarily flagging weak and hopeless cases that, if allowed to proceed to full trial, would waste judicial time and not serve the interests of justice. One does not need to look elsewhere to find an answer as to whether a PO is sustainable; instead, one should examine the



pleadings and discover that the suit is a non-starter – see the works of Ogola J. in *DJC v BKL* (Civil suit E021 of 2021) [2022] KEHC 10189 (KLR) (27 June 2022) (Ruling).

15. The 1st and 2nd Defendants object that the suit is time-barred by limitation on the basis that the cause of action arose in 2011 when the 3rd Defendant processed the titles fraudulently. I agree with the Applicant that the objection is narrow and founded on Section 7 of the *Limitation of Actions Act*. The objection does not, however, address Section 26 of the Act, which provides that the period does not begin running until after the Plaintiff has discovered the fraud. To determine when the Plaintiff discovered the fraud, this Court will inevitably be required to probe the evidence and look into matters of fact. On that basis, the objection raised would have gone beyond matters of law and therefore cannot qualify as a preliminary objection per se.
16. On whether or not to grant the temporary injunction, the oft-cited case of *Giella v Cassman Brown* (1973) EA 358 was referenced by the Applicant, in which the conditions for the grant of an interlocutory injunction were settled as follows:

“The conditions for the grant of an interlocutory injunction are now, I think, 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 be normally 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 the balance of convenience.”
17. A prima facie case in a civil application encompasses, but is not limited to, a legitimate and arguable claim. It refers to a situation in which, based on the evidence presented before the court, a tribunal that properly directs itself will conclude that there exists a right that has evidently been infringed by the opposing party, thereby necessitating an explanation or rebuttal from the latter. The decision of the Court of Appeal in *Mrao Ltd v First American Bank of Kenya and 2 others* [2003] serves as a valuable precedent in this regard.
18. In the present case, the Plaintiff is required to establish, at this interlocutory stage, that she possesses a right over the Suit properties which are at risk of being infringed by the Defendants and which merit protection through a temporary injunction pending the hearing and determination of this suit.
19. The Applicant has tendered validly registered title deeds in respect of the Suit Properties. Prima facie, the Applicant is a bona fide purchaser for value from the then registered owner Nguyo Nandi Said alias Guyo Dadi and has duly paid the stamp duty of the Suit Properties. Property Gede/Dabaso/630 was purchased in 1997, and property Gede/Dabaso/641 was purchased in 1999.
20. According to section 26(1) of the *Land Registration Act*, 2012, the import of a validly registered Certificate of Title for a parcel of land indicates that the title held by a registered proprietor serves as prima facie evidence of their absolute and indefeasible ownership of the land, subject to any encumbrances, easements, restrictions, and conditions noted in the certificate. However, this title can be contested on the basis of fraud or misrepresentation involving the proprietor, or if the certificate was obtained through illegal means, procedural errors, or corrupt practices. In this case, the Applicant has demonstrated prima facie ownership of the suit property by presenting validly registered titles for the Suit Properties, which are free of any endorsed encumbrances.
21. There is no evidence presented by any of the Defendants to dispute the claims and factual assertions made by the Applicant, and these claims remain unchallenged. Furthermore, the 1st, 2nd, and 3rd Defendants assert their ownership of the land in question based on title deeds numbered Gede/Dabaso/1009, 1010, and 1011. These title deeds were issued to the 3rd Defendant in 2011, allegedly as



subdivisions of property Gede/Dabaso/455. The Applicant contends that these titles were obtained unlawfully and through fraudulent means for several reasons; particularly, the documentation provided as evidence of ownership raises concerns regarding conflicting interests between the titles acquired by the Applicant in 1997 and 1999 from the previous registered owner, Guyo Dadi, and those obtained in 2011 by the 3rd Defendant, who acted as the estate administrator of the late Guyo Dadi without possessing the necessary Letters of Administration or Certificate of Confirmation of Grant. This situation is central to the application. The key question is which of the two sets of titles holds precedence over the other? That will be a matter for trial in the main suit.

22. In light of the above, the Applicant has established a prima facie case showing that she was the initial purchaser of the Suit Properties and acted as a bona fide buyer for value. Since the 1st, 2nd, and 3rd Defendants have not provided any evidence to dispute the Applicant's claim to the Suit Properties, the Plaintiff/Applicant has demonstrated a right that has been violated and requires protection at this stage against the 1st, 2nd, and 3rd Respondents. There is no need to address the additional two principles outlined in the Giella Case (supra). Therefore, the application dated 6th November 2024 is hereby granted along with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 8TH DAY OF MAY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Kimiti for the Plaintiff

Mr. Kilonzo for the 2nd Defendant

Ms. Ekiru for the 4th – 6th Defendants

Court Assistant: Happy

