



**Ayub (Suing as Administrator of Estate of Ayub Ahmed Ladha (Deceased)) v Board of Trustees Pentecostal Assemblies of God & 9 others (Environment & Land Case E125 of 2024) [2025] KEELC 4782 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4782 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E125 OF 2024**

**FM NJOROGE, J  
JUNE 26, 2025**

**BETWEEN**

**MOHAMED RAFIK AYUB ..... PLAINTIFF  
SUING AS ADMINISTRATOR OF ESTATE OF AYUB AHMED LADHA  
(DECEASED)**

**AND**

**THE BOARD OF TRUSTEES PENTECOSTAL ASSEMBLIES OF GOD & 9  
OTHERS & 9 OTHERS & 9 OTHERS & 9 OTHERS ..... DEFENDANT**

**RULING**

1. This ruling is on two applications dated 2<sup>nd</sup> December 2024 and 26<sup>th</sup> January 2025 respectively. The ruling on the plaintiff application dated 2<sup>nd</sup> December 2024 was deferred to pave the way for the simultaneous disposal of the two applications on record in the present consolidated ruling.
2. The application dated 2<sup>nd</sup> December 2024 seeks the following orders:
  - a. Spent
  - b. Spent
  - c. Pending the hearing and determination of the main suit the Honorable Court be pleased to issue temporary injunction orders restraining the respondents the agents, servant, employees or any other person acting on their behalf from interfering in any manner whatsoever with plot number Portion Number 93/2 Malindi file number LT 49 Folio Number 312 File Number 4406.
3. The application is promised on the ground set out at its foot and elaborated on by the sworn affidavit of Muhammad Rafik Ayub, the plaintiff.



4. The said grounds are: that the respondents have completely obstructed the applicant from administering the deceased's estate; the first defendant has manufactured fraudulent documents purporting to be the proprietor of the suit land which he has unlawfully subdivided into numerous portions which it has sold or leased to the rest of the respondents without the consent of the applicant/administrator; the deceased's estate has been subjected to wastage and it is in the process of being further alienated to the detriment of the lawful beneficiaries and that the applicant has a prima facie case high chances of success.

### **Response**

5. The 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> and 10<sup>th</sup> defendants filed their joint statement of defence on 24<sup>th</sup> of December 2024 denying the claim. They also filed a Notice of Preliminary Objection dated 20<sup>th</sup> December 2024. The grounds enumerated in the preliminary objection were subsequently made the grounds in an application dated 20<sup>th</sup> December 2024 seeking that the plaintiffs suit be dismissed and/or struck out with costs.
6. The 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> and 10<sup>th</sup> defendants also filed replying affidavit dated 20<sup>th</sup> of December 2024 sworn by Pastor Mogere Toraman Omwoyo Caleb. The gist of that affidavit is as follows: the Pentecostal Assemblies of God is rightfully and lawfully registered as the proprietor and/or owner and occupier of plot number 93/2 A and 19/2B registered in Volume LT 35 Folio 374/6 Malindi measuring 0.95 acres and 0.2 acres respectively. The said portions were acquired a subdivision from the original Plot Number 93/2. He exhibited an indenture and a map. He stated that the said property was duly purchased, full consideration paid, and transferred to the Church way back in 1982 by the then registered owner the late Ayub Ahmed; that upon registration and transfer, the 1<sup>st</sup> defendant took over vacant and peaceful possession and ownership property and has since continued to develop, utilize and deal with it in line with her proprietary rights. Numerous developments including a Church, school, a toilet, a kitchen and income generating structures and also the Pastor's house have been erected thereon. The property is also fenced. The Church has a membership of more than 100 followers and 100 school going children. Church worship has been held openly. Church functions have also been held openly. Economic activities too, have been undertaken openly and without interruption. No one has ever required the Church to pay any rent or challenge its ownership of the suit land whatsoever. Neither eviction nor distraint for rent has ever been sought. This has taken place during a period of about 40 years. The deponent adds that when the Church sought to obtain approval to extend and develop new structures the plaintiff unsuccessfully tried to block the defendants from acquiring such approval. In brief the defendant denies that a property belongs to the plaintiff, and accuses the plaintiff of failure to disclose material facts.

### **The Striking Out Motion Dated 26/1/2025**

7. The Replying Affidavit of the respondents was filed on 26<sup>th</sup> January 2025.
8. The application for striking out was filed on 30<sup>th</sup> January 2025.
9. This court ordered that the plaintiff should respond to the application for striking out within 14 days from 3/4/2025 but he never filed anything in response. However, this court will deem his affidavit in response to the notice of preliminary objection to be also a response to the application owing to its observations made in the ruling made on 3/4/2025.
10. This court will first address the application for striking out.



11. The application is brought on the basis that another suit, Malindi ELC No 225 of 2015 was lodged and dismissed on 30/5/2019 for want of prosecution and hence the present suit is res judicata.
12. For the res judicata rule to kick in, the previous suit must have been heard and determined on its merits. That is not what the defendants have stated in their application for striking out.
13. The defendant's application is one that can be disposed of summarily for the reason that they admit that the suit filed was not heard on its merits but was dismissed for want of prosecution. I find that the said application dated 20/12/2024 lacks merit and it is hereby dismissed with costs to the plaintiff.
14. I now turn to the plaintiff's application dated 2/12/2024.
15. It is trite that in an application for injunction an applicant must establish that they have a prima facie case, that they may suffer damage that can not be compensated for by way of damages if the orders of injunction do not issue. If there is no certitude on these two tests above, the court is entitled to rule on a balance of convenience having regards to the facts of the case.
16. I have noted that the plaintiff had ample time to respond to the replying affidavit of the defendants. The only document that the plaintiff filed was the affidavit in response to the notice of preliminary objection. That the plaintiff does not deny that there was a previous suit between him and the defendants or some of them is evident on the said replying affidavit. That suit was filed in 2015. It was dismissed in 2019 for want of prosecution. Consequently, this is an admission that the dispute between the plaintiff and the defendants has been festering for about 10 years now. As a result of this observation, I am inclined to believe the defendants when they state that the 1<sup>st</sup> defendant has been in occupation of the suit land for many years.
17. The plaintiff himself has pleaded that the dispute originated from an agreement entered into in 1975 which the 1<sup>st</sup> defendant allegedly breached and which was allegedly cancelled in 1981 with a partial refund being made to the 1<sup>st</sup> defendant. In the same year, the plaintiff avers, a new agreement was entered into permitting the 1<sup>st</sup> defendant to be on the suit land but as a tenant.
18. The main action on the part of the defendants which led to great discontent on the part of the plaintiff and precipitated the present suit is the 1<sup>st</sup> defendant's alleged application made on 20/5/2014 seeking that the 1<sup>st</sup> defendant be issued with a deed plan and a title deed. Considering that the parties' engagements with each other admittedly began in 1975, and the deceased registered proprietor is said to have died in 2008, it is evident that there is likelihood of lengthy occupation of either all the defendants or the 1<sup>st</sup> defendants on the suit property which needs to be explained by the parties.
19. From the proceedings of 9/12/2015 in Malindi ELC No 225 of 2015, it can be noted that indeed the advocate appearing for the plaintiff in that case, who is the present plaintiff too, informed court that some developments were being undertaken by the 1<sup>st</sup> defendant in that case who is also the 1<sup>st</sup> defendant in the present case. On the basis of the information availed then, the court ordered on 24/12/2015 that the status quo prevailing before the order of 9/12/2015 be maintained. It has not been denied that the present suit and the former suit have the same land as their subject matter.
20. In this court's view, the facts disclosed in this matter and in the copies of documents from the former matter are indicative that an injunction restraining the defendants from interfering with the suit land in the terms prayed for by the plaintiff would have the consequences of a mandatory injunction against the defendants who are on the suit land. If the court is to allow any restrictions with the dealings on the suit land they must be proportionate.



21. Consequently, the only recourse for this court is to order that the present status quo prevailing as at the date of this order shall be observed or maintained by all the parties to the present suit pending the hearing and determination of the present suit.
22. Parties shall ensure that they comply by filing their documents and witness statements and lists within 30 days and the defendants within 60 days with the timelines running concurrently, and the suit shall be mentioned on 4/11/2025 for directions as to hearing.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 26 DAY of JUNE 2025.**

**MWANGI NJOROGE.**

**JUDGE, ELC, MALINDI.**

