



**Lawler & 2 others; Gregorio (Intended Interested Party) (Environment and Land Case E115 of 2024) [2025] KEELC 5039 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5039 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE E115 OF 2024**

**EK MAKORI, J  
JUNE 26, 2025**

**IN THE MATTER OF**

**MARK PETER LAWLER ..... 1<sup>ST</sup> DEFENDANT**

**ELIZA JEBET LAWLER ..... 2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, MOMBASA ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**ANTONIO DE GREGORIO ..... INTENDED INTERESTED PARTY**

**RULING**

1. Three applications are currently pending before this court for adjudication. The first application concerns a plea for an injunction filed on November 11, 2024 by the plaintiff. The second, dated November 29, 2024, requests a stay of further proceedings pending the hearing and determination in Malindi ELC Case No. 49 of 2022, Green Holiday Condos Ltd. v. Gregorio et al. The third application, dated December 2, 2024, pertains to the inclusion of Mr. Antonio De Gregorio as a party in this suit.
2. The court instructed that the motions be heard concurrently, and the learned counsels for the parties were directed to submit written arguments. They agreed to comply and provided this court with the relevant provisions of the applicable laws and judicial precedents, for which the court expresses its gratitude and appreciation for their cooperation in this matter.
3. Arising from the materials and submissions presented before me, the issues requiring the court's determination are whether it is appropriate to issue an injunction at this juncture, whether to stay proceedings pending the resolution of the previous suit, and whether to include Mr. Antonio De Gregorio as a party in this matter and who should bear costs.



4. After a thorough review of the averments and arguments presented by the parties, it is clear from the examination of both the previous and current lawsuit, along with the report submitted by the Deputy Registrar of this court, that these facts remain consistently relevant across all three applications.
- i. There is a pending lawsuit, Malindi ELC No. 49 of 2022, Green Holiday Condos vs. Gregorio et al, before my brother, Njoroge J., which comes for directions on a motion to dismiss the entire suit for want of prosecution. Those directions are to be provided on 22nd September 2025.
  - ii. The issues raised in the initial matter concern the revocation of title No. 37209, registered in the name of the 1st defendant (intended interested party in this suit), based on allegations of fraud.
  - iii. In the initial suit - A declaration that the property known as CR No. 46305, LR. 17835/6 (Original No. 17835 Kilifi) belongs to the plaintiff (who is also the plaintiff here).
  - iv. As stated, the orders requested in the initial suit include revoking title No. 37209, documented on Land Survey Plan No. 299522 Kilifi (Paragraph 4 of the initial suit and paragraph 4 of the current suit). This title was originally in the name of the intended interested party and is now held by transfer to the current 1st and 2nd defendants.
  - v. Both suits seek vacant possession of the premises in question.
  - vi. Finally, both suits seek costs.
5. On the issue as to whether to grant an injunction or not, it will be observed that this court sent the Deputy Registrar of this court to verify the status of occupation of the suit property. In her report dated 29th April 2025, she observed as follows:

“There are also 3 permanent buildings within the compound. These buildings include 2 one-bedroom cottages and the original house. There is ongoing construction within the compound. The court was informed that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are in charge of the construction.

The 2 one one-bedroom cottages are under construction. The cottages share a pavilion and a plunge pool that is right outside both cottages. The original house is being renovated. The 1<sup>st</sup> Defendant explained that the renovation would result in finished houses being a 7-bedroom villa. None of these houses is ready for occupation.

The property is beachfront with a view of the ocean. There is a wooden gate leading straight to the beach.

Visual presentation

The court took photographs of the suit property, which are annexed to this Report.

Conclusion

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are currently in possession of the suit property.”

6. For an injunction to be issued, the threshold to be met prior to the grant thereof is as outlined in *Giella v Cassman Brown* [973] EA on page 358:

“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.”

7. The first issue to determine then is whether the applicants have proved a prima facie case with the probability of success as held in *Mrao v First American Bank of Kenya & 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.”

8. The principles outlined in *Giella’s Case* shall be addressed sequentially, as upheld in *Kenya Commercial Finance Company Ltd v Afraha Education Society* [2001] 1 EA 86, as 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.”

9. We are presented with two conflicting interests: that of the plaintiff, who asserts entitlement to the ownership of the suit property, claiming it has been fraudulently transferred to the 1st and 2nd defendants by the intended interested party. It is important to note that the 1st and 2nd defendants are currently in occupation; therefore, an injunction cannot be issued against them, as this would necessitate an interlocutory mandatory injunction, which is deemed inappropriate at this juncture.

10. It is therefore appropriate for the court to issue preservation orders now to protect the foundation of the property during the investigation of the parties’ titles, which will happen during the main suit hearing. Accordingly, the court shall issue status quo orders, as outlined in the final orders below.

11. As stated above, the 1st and 2nd defendants requested a stay of proceedings until *Malindi ELC Case No. 49 of 2022, Green Holiday Condos Ltd v Gregorio et al.*, is heard. They argued that the cases involve the same issues, particularly property ownership, citing the decision in *Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya* [2020] KEHC 10142 (KLR). The court in that suit discussed the doctrine of sub judice. It granted a stay, stating that when an issue is pending involving the same parties, another court is barred from trying it. The court can stay proceedings at any stage of the process. The Supreme Court clarified in *Kenya National Commission on Human Rights v Attorney General* [2020] eKLR that a matter is sub judice when:

“...there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives or persons claiming under them.”

12. The plaintiffs in the present litigation contend that, although a prior suit exists, the parties involved are different. They assert that the 1st defendant in the initial suit (the intended interested party) had long transferred the suit property to the present 1st and 2nd defendants, whose titles the plaintiff asserts should be canceled due to allegations of fraud.

13. Whereas both disputes pertain to the same property, identified as Land Reference Number 17835/6 (CR 37209), located in Kilifi. In *Malindi ELC Case No. 49 of 2022, Green Holiday Condos Ltd v. Gregorio et al.*, the central question is whether Antonio Di Gregorio, the seller who transferred the land



to the 1st and 2nd defendants, possessed a valid title. The plaintiff contends that the titles owned by the 1st and 2nd defendants are invalid due to a defect in Mr. Di Gregorio's title. In essence, both disputes revolve around the ownership of the same property, rendering the subject matter identical. Moreover, the reliefs requested in both cases are fundamentally alike. The only catch we have is that the title has already been conveyed to the current 1st and 2nd defendants. Gregorio aims to be recognized as an interested party in the present suit to bolster their titles. Additionally, there is a motion to dismiss the prior suit due to lack of prosecution, which the parties failed to disclose to the court. In conclusion, the earlier suit is effectively non-existent. There is no justification for staying this proceeding now that the transfer to the 1st and 2nd defendants, who are not involved in the previous suit, has already occurred.

14. Building on earlier remarks, the next question is whether the interested party should be included as a defendant in these proceedings. As mentioned earlier, he has stepped forward to show how he transferred the suit property to the 1st and 2nd defendants. As correctly submitted by the 1st and 2nd respondents, the criteria for joining a party in an Environment and Land Court (ELC) case were set by the Supreme Court in *Fanikiwa Limited v Sirikwa Squatters Group & 20 others; Mibei & 10 others (Applicant)* [2023] KESC 39 (KLR), citing *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* [2016] KESC 12 (KLR).
15. In the *Muruatetu Case*, the Supreme Court outlined a three-step process for adding a party to ongoing proceedings. The applicant must submit a formal application that demonstrates the person's interest, potential prejudice, and the specific issue they wish to raise that the current parties have not addressed:

“One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”
16. Order 1 Rule 10 provides this court with broader discretion in joining parties in proceedings. Order 1 Rule 10(2) allows this court to suo moto join any individual whose presence is crucial for the court to make a thorough and effective decision on all the questions before it.
17. In this case, the proposed defendant has submitted a formal application explaining the reasons for their request to join the case, as he is a defendant in ELC Case No. 49 of 2020, where he has been sued by the plaintiff herein as the registered owner of the same property involved in these proceedings.
18. He has explicitly articulated how he acquired the suit property from Ketan Doshi and has attached the Sale Agreement, Transfer, and other pertinent documents of title related to the property. Furthermore, the proposed defendant has affirmed that after purchasing the suit property in 2004, he occupied it peacefully until its sale to the 1st and 2nd Defendants in 2024.
19. In my opinion, the intended defendant has no interest in the property involved in the suit; at most, he is there to support the title he transferred to the 1st and 2nd defendants. He should, at best, be called as a witness to avoid duplication.



20. My perspective is that the proposed defendant intends to join this case; however, the prior case involving him remains ongoing, and he should have resolved that matter with the plaintiff.
21. In conclusion, I observe that the proposed defendant will contribute nothing to the pursuit of justice in this case other than the complication of proceedings. Such an application will be denied.
22. Consequently, the final orders of this court will be as follows concerning the three motions:
  - i. Notice of Motion dated 11<sup>th</sup> November 2024 allowed to the extent that:
    - a. Status quo orders in respect to the suit property to be maintained. That is the suit property to remain intact—no further dealing, transfer, or charging of the same till this matter is heard and determined.
    - b. b) The 1st, 2nd, and 3rd Defendants are hereby restrained from interfering with the survey records regarding the suit property described as CR. No. 46305, Land Survey Plan No. 299522, Kilifi, and assigned LR. 17835/6 (Original No. 17835 Kilifi) and making further entries on LR No. 17835/6 until this suit is heard and determined.
    - c. That pursuant to the visit by the Deputy Registrar of this court, the 1<sup>st</sup> and 2<sup>nd</sup> defendants are to remain in possession till this matter is heard and determined.
    - d. That there shall be no further construction on the suit property till this matter is heard and determined.
  - ii. Notice of Motion dated 29<sup>th</sup> November seeking a stay of proceedings of ELC No. 49 of 2022 is dismissed. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are not parties to those proceedings.
  - iii. Notice of Motion dated 2<sup>nd</sup> December 2024, seeking the joinder of one Antorio De Gregorio, is dismissed as he has no stake or interest in the suit property herein, having ostensibly transferred the title to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. His claim in ELC No. 49/2022 still stands. The suit is still active.
  - iv. Costs in the cause.

**DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 26<sup>TH</sup> DAY OF JUNE 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Kamau for the Plaintiff

Mr. Ouma for the 1<sup>st</sup> & 2<sup>nd</sup> Defendants

Mr. Nyoike for the 3<sup>rd</sup> Defendant.

Ms. Naliaka for the Intended Interested Party.

Happy: Court Assistant

