



REPUBLIC OF KENYA



**Chilengeli & 2 others v Mwangome & 9 others (Environment & Land  
Case E031 of 2025) [2025] KEELC 4729 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4729 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E031 OF 2025**

**FM NJOROGE, J**

**JUNE 25, 2025**

**BETWEEN**

**MOSES MUNGA CHILENGELI ..... 1<sup>ST</sup> PLAINTIFF  
MNYAZI MWATUA PIRI ..... 2<sup>ND</sup> PLAINTIFF  
FRANCIS CHILENGELI NJUGA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**CYRUS MWANGOME ..... 1<sup>ST</sup> DEFENDANT  
TEMBO MWANGOME ..... 2<sup>ND</sup> DEFENDANT  
NYAMAWI MWANGOME ..... 3<sup>RD</sup> DEFENDANT  
BURUA SANGA ..... 4<sup>TH</sup> DEFENDANT  
TUNJE RIMBA ..... 5<sup>TH</sup> DEFENDANT  
MUYE MWANGOME ..... 6<sup>TH</sup> DEFENDANT  
CHARLES JIRA RIMBA ..... 7<sup>TH</sup> DEFENDANT  
MUNGA MWANGOME ..... 8<sup>TH</sup> DEFENDANT  
NICHOLAS JUMA SANGA ..... 9<sup>TH</sup> DEFENDANT  
EVANS KITI ..... 10<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiffs moved the Court by way of a Notice of Motion application dated 1/4/2025 seeking the following orders:



1. This Honourable Court do issue a temporary injunction restraining the Defendants, their agents, servants, or anyone acting under them from trespassing, entering, ploughing, cultivating, constructing, or in any other way interfering with the suit property, Plot No. 1210 and 695 (Kilifi-Pingilikani), Kilifi County, pending the hearing and determination of this suit;
  2. This Honourable Court do issue an order compelling the Kilifi County Police Commander to provide security to the Plaintiffs in enforcing the orders of this Honourable Court and preventing any further unlawful actions by the Defendants;
  3. This Honourable Court do issue an order directing the Kilifi Land Registrar to facilitate the demarcation and proper boundary marking of the suit property;
  4. This Honourable Court do make such further or other orders as it may deem fit and just in the circumstances;
  5. Costs of this application be provided for.
2. The application was supported by an affidavit sworn on an even date and filed by the 1<sup>st</sup> Plaintiff and is based on the following grounds:
1. That the Plaintiffs are the legal owners of Plot No. 1210 and 695 (Kilifi-Pingilikani), Kilifi County (the suit properties) with a valid title deed issued in 2013;
  2. That the Defendants have unlawfully trespassed onto the suit property, engaged in malicious damage, and issued threats to the Plaintiffs;
  3. That the Defendants have attempted to forcefully cultivate the land and have physically attacked the 3<sup>rd</sup> Plaintiff, causing grievous bodily harm;
  4. That the continued acts of trespass and aggression have subjected the Plaintiffs to untold suffering, economic loss, and emotional distress.
  5. That the Plaintiffs have reported these actions to relevant authorities, but no meaningful intervention has been made;
  6. That unless restrained by this Honourable Court, the Defendants will continue with their illegal actions, thereby rendering this suit nugatory.
  7. That the Plaintiffs have a prima facie case with a high probability of success;
  8. That the balance of convenience tilts in favor of the Plaintiffs as they stand to suffer irreparable loss if the orders sought are not granted.
3. In response, the Defendants filed a Notice of Preliminary Objection dated 28/4/2025 and a Replying Affidavit sworn on 29/4/2025 by the 6<sup>th</sup> Defendant. The crux of the Preliminary Objection is that the present suit is sub judice, as the subject matter is actively before another court in Malindi ELC Petition No. 9 of 2014, which remains undetermined.
4. The 6<sup>th</sup> Defendant deposed that the suit properties are the same as those in the Malindi ELC Petition No. 9 of 2014, and that the allegations raised in the current application are unsubstantiated. He further averred that the Defendants have been in actual possession and occupation of the suit properties, with the exception of a half-acre parcel occupied by the Plaintiffs. Given that status quo has been maintained in the pending Petition, he argues that the orders sought in the present application lack legal foundation and no sufficient grounds have been advanced to warrant their grant.



5. Both the application and Preliminary Objection were canvassed by way of written submissions.

### **Plaintiffs' submissions**

6. According to the Plaintiffs, the objection on sub judice could not stand since the parties herein are not parties in the Petition and the causes of action in both matters are different. They added that the subject matter is not directly and substantially the same and that there is no risk of conflicting judgments. The Plaintiffs relied on the cases of Njogu v Ndungu [2000] eKLR; Thiba Mini Hydro Co. Ltd v Josphat Karu Ndwigwa [2013] eKLR.
7. The Plaintiffs argued that as long as the suit properties are registered in the names of the Plaintiffs, they retain the right to seek protection of those interests. They relied on the case of David Peterson Kiengo & 2 Others v Kariuki Thuo [2012] eKLR.

### **Defendants' submissions**

8. Relying on Section 6 of the *Civil Procedure Act* and the cases of Kinatwa Co-operative Savings & Credit Society Limited v Kinatwa Prestige Ltd [2021] eKLR and Kenya National Commission on Human Rights v AG, IEBC & 16 Others (Interested Parties) [2020] eKLR, counsel for the Defendant argued that the present suit is brought in bad faith and it is an abuse of the court process since the petition addresses substantially the same issues. He referred the court to the reliefs sought in the Petition. He explained that the 3<sup>rd</sup> Plaintiff herein is a 2<sup>nd</sup> Respondent in the Petition, while the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs are the 3<sup>rd</sup> Plaintiff's son and wife respectively.
9. Counsel challenged the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff's authority to plead on behalf of the 3<sup>rd</sup> Plaintiff. He argued that there is no such authority presented before the Court and that it is clear that the 3<sup>rd</sup> Plaintiff is not aware of the proceedings.
10. He proceeded that the case of Giella v Cassman Brown & Co. Ltd [1973] EA 358 sets three limbs to satisfy granting of injunctive orders namely show of a prima facie case, chances of irreparable injury and balance of convenience. To counsel, the Defendants are armed with a conservatory order issued on 1/4/2016 in the Petition and which is still in force, therefore the present application cannot succeed.

### **Analysis And Determination**

11. From the pleadings and submissions, two issues arise for determination:
  - i. Whether the Preliminary Objection on the grounds of sub judice is merited;
  - ii. Whether the Plaintiffs have met the threshold for grant of interlocutory injunctive relief.
12. Section 6 of the *Civil Procedure Act* provides that no court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they claim, litigating under the same title, where such suit is pending in the same or any other court competent to grant the relief claimed.
13. The Defendants argue that ELC Petition No. 9 of 2014 relates to the same suit properties and includes, as parties, the 3<sup>rd</sup> Plaintiff herein who is named as the 2<sup>nd</sup> Respondent in that Petition. They further submit that the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs are wife and son to the 3<sup>rd</sup> Plaintiff and are therefore privy to him within the meaning of Section 6. The Plaintiffs, on their part, contend that the parties are not the same, that the cause of action is different, and the doctrine of sub judice is inapplicable.



14. I have keenly perused the amended petition in ELC Petition No. 9 of 2014, it is obvious that the parties are not the same to those in the present suit. The Petition was filed by Sebastian Muye Mwangome, Cyrilus Shumaa Mwangome, Barawa Joseph Sanga, Nicholas Nyamawi Sanga, Mwangandi Shumaa Mwangome, and Wellington Benson Rimba, against Nyamawi Chimega Njuga, Francis Chilengeli, Benson Munga Chimega, Samson Mwamuye, Donald Mwatata Chimega, Alex Piri, Kai Pili Chimega, Ambrose Mwatata, Gabriel Mwatata, and some five government offices under the Ministry of Lands.
15. The only party appearing in both suits is the 3<sup>rd</sup> Plaintiff herein. The Defendants in this case do not appear in the Petition, neither do the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff. While it can be argued that the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' claim is under that of the 3<sup>rd</sup> Plaintiff, the Defendants have not demonstrated that they have any relation with the parties mentioned in the Petition. Because all three limbs must be satisfied and here the parties differ, the Preliminary Objection fails. The motion and suit are not sub judice, and I shall proceed to the merits of the application.
16. The guiding principles for the grant of interlocutory injunctions were laid out in *Giella v Cassman Brown* [1973] EA 358 - The applicant must establish a prima facie case with a probability of success; the applicant must demonstrate that irreparable harm would result if the injunction is not granted, and if in doubt, the court should determine the matter on a balance of convenience.
17. This principle was further elaborated in *Mrao Ltd v First American Bank of Kenya Ltd* [supra], where the Court defined a prima facie case as one which, on the face of it, discloses a genuine and arguable claim, capable of succeeding at trial.
18. The Plaintiffs contend that they are the lawful proprietors of the suit properties by virtue of titles issued in 2013. They annexed copies of title deeds to support this assertion.
19. However, upon perusal of the said documents, it is evident that Kilifi/Pingilikani/695 is registered in the names of Nyamawi C. Njuga, Mwataya C. Njuga, Ambrose M. Mwatata, Kai P. Chimega, and Gabriel Z. Mwatata - none of whom are parties to this suit. The Plaintiffs have not demonstrated any legal interest or authority to sue on behalf of the said registered proprietors.
20. In respect of Kilifi/Pingilikani/1210, the title is in the names of Donald Chimega Mwatata, Francis Chilengeli, and Kai Pili Chimega. Only Francis Chilengeli (the 3<sup>rd</sup> Plaintiff) is a party to this suit. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, who are said to be his family members, are not named on the title and have not presented any formal authority to litigate on his behalf or co-own the property. There is also no indication that the other co-proprietors have consented to the institution of this suit.
21. These ownership discrepancies cast doubt on the capacity of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs to assert proprietary claims or to seek injunctive relief over the suit properties, particularly Plot No. 695. Furthermore, the apparent co-ownership of Plot No. 1210 raises legal concerns about the necessity of joining all registered proprietors in matters affecting common ownership.
22. In light of these complexities, and to prevent escalation or prejudice before full hearing, the most appropriate relief at this interlocutory stage is to preserve the existing status quo rather than issue an injunction in favor of parties whose legal interest in the entire suit property has not been sufficiently established.
23. In the foregoing, the Court issues the following orders: -
  - a. The status quo currently prevailing on Plot No. 1210 (Kilifi-Pingilikani), Kilifi County shall be maintained pending the hearing and determination of the main suit;



- b. No party shall commence new developments, including construction, ploughing, or any other activities that may alter the character of Plot No. 1210 until further orders;
- c. The Preliminary Objection dated 28/4/2025 is dismissed.
- d. Costs shall be in the cause;
- e. The plaintiffs shall file and serve their bundle of documents within 30 days of this order and the defendants shall file and serve their bundle of documents within 60 days of this order; timelines shall run concurrently;
- f. This suit shall be mentioned on 22<sup>nd</sup> October 2025 together with ELC Petition No. 9 of 2014 for directions as to hearing.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

