



Kenya Airways Limited v Shutu; Shutu (Proposed Interested Party) (Environment and Land Case 10 of 2008) [2025] KEELC 6524 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6524 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 10 OF 2008
FM NJOROGE, J
SEPTEMBER 30, 2025**

BETWEEN

KENYA AIRWAYS LIMITED PLAINTIFF

AND

JAPHET NOTI CHARO SHUTU DEFENDANT

AND

RUKIYA CHARO SHUTU PROPOSED INTERESTED PARTY

RULING

1. Katana Shutu Masha and Masha Shutu Fondo filed an application dated 11/11/2024 and the orders sought were framed as follows: -
 1.Spent;
 2.Spent;
 3.Spent;
 4.Spent;
 5. That pending the hearing and determination of the main suit, upon the grant of the order for this suit to be heard de novo, an order be issued restraining the Plaintiff/respondent and the Defendant/respondent, whether by themselves, their agents, employees, or otherwise, from selling, transferring, charging, leasing, or in any other manner alienating or disposing of the suit property herein, specifically, the property known as L.R. 5785 Malindi;
 6. That this honourable court be pleased to grant orders joining the intended interested parties/ applicants in the instant suit to wit Malindi ELC Suit No. 10 of 2008;



7. That there be a review of the judgment of this Court delivered on 14th March 2019 and the same be set aside and the suit be heard de novo;
 8. That costs of this application be provided for.
2. The Applicants had averred that they are the legal representatives of the estate of Charo Shutu Masha whom they claimed is the legal owner of the property L.R 5785 within Plot M5 Malindi (the suit property) which was the subject of the main suit herein; that the Defendant did not have any legal capacity to represent the said estate and that he neither informed the family of the suit. The Applicants averred that they only became aware of the suit and judgment when some of the widows of the deceased visited the suit property and coincidentally witnessed the service of the notice to show cause. That application was dismissed on 19th March 2025. Now the present applicant has made an almost similar application, dated 6/5/2025. I will set out the principal orders set out verbatim herein as follows:
3. That this honourable court be pleased to stay the execution of the judgment made herein on 14th March 2019 and/or any consequential orders made therefrom pending the hearing and determination of this application;
 4. That this honourable court be pleased to review and/or vary and/or set aside the judgment herein on 14th March 2019 and /or any consequential orders made therefrom;
 5. That this honourable court be pleased to reopen and that the plaintiff's the proceedings herein with the aim of according the proposed interested/ affected party chance to be heard and that the plaint herein be amended to enjoin the proposed interested/affected party as a defendant and she be allowed to file responses and /or defences against the plaintiff's suit herein;
 6. That the costs of this application be provided for.
3. The application is premised on the grounds at the foot thereof and in the supporting affidavit of Rukiya Charo Shutu. They are briefly that Rukiya is a daughter of the late Charo Wa Shutu and she had been in occupation of the plot known as M5 from which the plot known as LR 5785 has been carved, since her birth; that judgment was delivered in the present suit in March 2019 and she was not heard prior to the delivery of that judgment, she not having been joined as party to the suit and was thus condemned unheard which should not have been the case in view of the provisions of Article 50 of the constitution. It is stated that the orders made in the suit would adversely affect her.
4. Rukiya does not peg her claim on the land on anything other than possession and lengthy residence thereon. She does not even purport to be an administrator of the estate of Charo Shutu under whose name and estate she possibly could be claiming, in order to demonstrate her locus standi. She has come to this court quite late in the day when this court has already dismissed the application filed by Katana Shutu Masha and Masha Shutu Fondo. The issues arising herein are similar to those in the application dated 11/11/24 filed earlier in this suit by Katana Shutu Masha and Masha Shutu Fondo and this court needs not rehash everything it stated in dismissing that application. In the said ruling this court gave the following as reasons for dismissal:
1. The applicants are not contending that they are residing on the premises;
 2. They did not run the risk of eviction therefrom; the manner in which they narrated the fate of the widows of Charo Shutu showed that they had been aware of the history of the case all along;
 3. The widows were also on the suit land;
 4. The widows themselves have raised no issue and appear to have accepted the resettlement plan;



5. The deceased had lived only as squatters on the suit land;
6. The intervention of the local administration was only to help Charo Shutu consider his occupation on M5;
7. Evidence available showed that Charo Shutu had settled on plot no M5 after its acquisition, when it was already government land;
8. Prescriptive rights can not accrue against government land;
9. There was no evidence that Charo Shutu and his family had occupied the whole land known as M5;
10. The applicants in the application had failed to establish an identifiable stake in the suit land.
11. For the same reasons above, and also for the additional reason that the applicant has also failed to establish that she is in occupation of the plot subject of this suit known as L.R. 5785 which is owned by the respondent, I find that her application lacks merit and it is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30TH DAY OF SEPTEMBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

