

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MOMBASA

ELCLOS NO. E020 OF 2025

DICKSON KARISA BARAZA 1ST
APPLICANT

GARAMA RANDU MAKAZI 2ND
APPLICANT

JOHN NAHOZA 3RD
APPLICANT

MOHAMED CHAI 4TH
APPLICANT

NGALA MCHARO NGALA & 35 OTHERS 5TH
APPLICANT

VERSUS

ZUMZUM INVESTMENTS LIMITED
RESPONDENT

RULING

[NOTICES OF MOTION DATED 12TH MAY 2025 AND 11TH JUNE 2025]

1. The Applicants moved the court through the notice of motion dated 12th May 2025 seeking for among others temporary injunction order restraining the respondent from evicting, demolishing, harassing, and or interfering in any manner with the applicants occupation of plot No. 5905/1/MN, CR. No. 19849, Shanzu, Mombasa County, the suit property, and the OCS, CCIO, DCIO Dog Section Police Station to enforce the order pending the hearing of the suit. The application is

based on the four grounds on its face and supported by the affidavit of Dickson Karisa Baraza, 1st applicant, sworn on the 12th May 2025, inter alia deposing that he has the authority of the other applicants to swear the affidavit; that though they have lived on the suit property for over 50 years, their houses were demolished by the respondent using bulldozers with the help of police officers from Bamburi Police Station on 11th May 2025, leaving them homeless and displaced; that the respondent has constantly threatened to evict them from the property though its ownership of the land is doubtful.

2. The application is opposed by the respondent through the replying affidavit of Abdulkarim Saleh Muhsin, director, sworn on the 18th June 2025, in which he inter alia deposed that the application and originating summons are bad in law, an abuse of the court process, totally in bad faith and based on falsified evidence contrary to section 108 of the Penal Code Cap 63 of the Laws of Kenya, and will apply for the applicants and their advocate to be investigated and prosecuted for committing perjury; that the respondent bought the suit property from African Safari Limited in 2009 at Kshs.160 million vide an agreement dated 1st October 2009, and that the applicants have never been in occupation of the said

land; that the respondent took possession of the suit property upon purchase and no squatters have ever invaded it; that the applicants' claim that their houses were demolished by the respondent using bulldozers with the police help is a perjury as the historical google satellite images from 2008 to 2024 that are attached show no structures on the land except the tennis court built by African Safari Club Limited; that the photographs attached by the applicants were taken from a different location and not the suit property; that the respondent has never had offices at Kiembeni, contrary to the affidavit of service by Solomon Benard Ogal Owango of 28th May 2025 that he served the respondent at Kiembeni, Turkey Base; that the respondent's office is at Shimanzi next to the Mombasa Port, and that they only got to know about this proceeding through the police; that the applicants are using the order of the court to invade the suit property.

3. The applicants filed the second application dated 11th June 2025 seeking for inter alia to have the respondent committed to civil jail for six months or for such period as the court may deem fit. The application is based on the five grounds on its face and supported by the affidavit of Dickson Karisa Baraza, 1st applicant, sworn on the 11th June 2025. It is their case that

on 8th June 2025, the respondent disobeyed the court order of 3rd June 2025 by continuously using the police despite being served with the order on the 5th June 2025

4. The application is opposed by the respondent through the replying affidavit of Abdulkarim Saleh Muhsin, director, sworn on the 18th June 2025, in which he inter alia deposed that the application is an abuse of the court process as the respondent only got to know of the order of 4th June 2025 after being served with the contempt application on 12th June 2025; that the order itself has never been served; that the order restraining the respondent from evicting the applicants from the suit property was obtained through non-disclosure and falsification of material facts as the applicants have never been on the said property; that there has been no single dwelling house on the suit property and the respondent has not been in contempt of court order.

5. The record confirms that after the application dated 12th May 2025 was filed, the court granted an order to maintain status quo on 13th May 2025, pending service and inter parties hearing on 3rd June 2025. On that later date, the court granted a temporary order of injunction in terms of prayer (2) pending inter parties hearing on 24th June 2025. The

application dated 11th June 2025 was subsequently filed, and the court on 12th June 2025 directed it be served for hearing inter parties on 23rd June 2025. When the counsel for the applicants attended the court on 23rd June 2025 she sought for leave to file a further affidavit, and for the application dated 11th June 2025 to be heard the following day with the one dated 12th May 2025. On the 24th June 2025, counsel for the applicants and respondents appeared before the court and were heard on various issues raised, after which the court directed inter alia that the applicants file a further affidavit; that the Deputy Registrar to visit the suit property and file a report on the occupation, use and structures on the suit land; that parties to file and serve submissions in fourteen days each. The Deputy Registrar subsequently filed his report on the locus visit done on 4th July 2025.

6. The learned counsel for the applicants and respondent filed their submissions dated the 15th July 2025 and 21st July 2025 respectively, which the court has considered.

7. The record/CTS show that on 22nd July 2025 at 16.23, the applicants filed a further affidavit sworn by Dickson Karisa Baraza on 2nd July 2025. Obviously, that affidavit should at least have been filed and served with the applicants

submissions, but was not. It was filed after the respondent had filed their submissions and it would amount to an injustice on the respondent to consider any facts contained therein in this ruling and is therefore struck out.

8. The following are the issues for the court's determinations:

- a. Whether the applicants had served the court order granted on 3rd June 2025 and issued on 4th June 2025 upon the respondent, and if so, when.*
- b. Whether the respondent disobeyed the said order on 8th June 2025 as alleged, and if so, what sanction to issue.*
- c. Whether the applicants have met the threshold for issuance of temporary order of injunction at this interlocutory stage.*
- d. Who pays the costs on each of the two applications?*

9. The court has carefully considered the grounds on the two applications, affidavit evidence, submissions by the learned counsel and come to the following conclusions:

- a. The respondent has through its replying affidavit sworn on 18th June 2025 disputed service of the temporary injunction order of 4th June 2025, deposing inter alia that it got to know about it after being served with the contempt application on 12th June 2025, but the order

itself has never been served. That the respondent's office is at Shimanzi next to the Mombasa Port, and not at Kiembeni, Turkey Base as alleged in the affidavit of service. I have perused the affidavit of service of Solomon Benard Ogal Owango, sworn on 28th May 2025, and noted at paragraphs 3 and 4 he deposed inter alia that on 15th May 2025, he received a court order dated 13th May 2025 among other documents from the applicants counsel and served them upon the respondent at its Kiembeni, Turkey Base. That the order and other documents were received by a secretary who however declined to sign in acknowledgement.

- b. As restated in paragraph (5) above, the order granted on 13th May 2025 was for the parties to maintain status quo, pending service and inter parties hearing on 3rd June 2025. It is on 3rd June 2025 that the court granted a temporary order of injunction in terms of prayer (2) pending inter parties hearing on 24th June 2025. It is that injunction order that the respondent claims was obtained through non-disclosure and falsification of material facts as the applicants have never been on the said property, and that there has been no single

dwelling house on the suit property. It is also the order that the applicants alleges through their contempt application dated the 11th June 2025, that the respondent disobeyed on 8th June 2025. In view of the respondent's claim that the order of 3rd June 2025 was never served upon them, and further that it was obtained through non-disclosure and falsification of material facts, the court finds it just and fair to make a determination of the injunction notice of motion dated 12th May 2025 first before coming back to the contempt application.

- c. The record confirms that following the court's directions of 24th June 2025, the Deputy Registrar visited the suit property and filed his report on the occupation, use and structures on the suit land, dated the 4th July 2025. The report indicates that the locus visit was done on 4th July 2025, and the Deputy Registrar's finding at page (2) is as reproduced herein below:

"The suit property is a prime plot next to Pride Inn Hotel and once Grand Hotel by name African Safari Club a.k.a Coral & Beach Palm Hotel which is now seemingly non-operational.

On commencement of the tour of the suit property, seven horses were sited grazing in the suit property and on inquiry the director of the respondent informed the court that the same are the respondent's horses and they normally graze on the suit property.

On the suit property, there is concrete yard that was said to have previously been used as a tennis court that hasn't been used for quite some time and whose floor is cracked and partly torn.

The suit property is generally composed with vegetation with evidence of some recent cutting of trees since there are a number of tree stumps in some areas of the suit property.

There is also a disused dam on one side of the plot where there is an access road into the plot. The said access road was said to have been the initial access road to the said African Safari Club a.k.a Coral & Beach Palm Hotel when it was fully operational. The director of the respondent informed the court that the respondent used to breed crocodiles in the dam. There is also a water

pan on the opposite side of the access road said to have been used previously to breed turtles.

There were abandoned building materials (quarry stones, a pile of sand and some dried cement and sand mixture (mortar) on one part of suit property and on another part, a one room foundation dug on the ground, also abandoned.

On the outer edges of the suit property, there were concrete beacons along the road side which were hammered/crushed.

Apart from the above observations, there was nothing else significant on the suit property apart from the vegetation.”

d. The court has carefully considered the affidavit evidence by both sides, especially the photographs and google satellite maps attached by the applicants and respondent respectively, and it is not difficult to find that the Deputy Registrar’s report confirms the respondent’s position that the applicants have not been in occupation and or possession of the suit property. The court is left baffled on where the photographs attached to the applicants’ affidavit in support of the application

dated 12th May 2025 were taken from, as it cannot be the suit property. It is worrisome that the applicants who are represented by counsel, who is an officer of the court, could have the courage to file a deposition with such photographs to mislead the court that they deserved the temporary injunction order to be issued in their favour, as they were in possession of the suit property, when they knew they were not. It is also baffling that the applicants could seek to have the respondent committed to civil jail for disobeying the court order on 8th June 2025, while aware they obtained the order of 3rd June 2025 through misrepresentation and non-disclosure. It is noted that the applicants have not specified or given particulars of what it is the respondent did on 8th June 2025 that in their view constituted disobedience of the court order. Had the facts presented by the respondent and the Deputy Registrar's report have been brought to the attention of the court before 3rd June 2025, the injunction order issued on that date would not have been issued. Accordingly, and in respect of the application dated 12th May 2025, I find the applicants have failed to present a

prima facie case with a probability of success to warrant the issuance of temporary injunction order. The applicants do not stand to suffer any irreparable loss or injury if the order is not issued and the balance of convenience tilts towards not issuing the order. It follows that the contempt application dated 11th June 2025 must fail as the alleged injunction order it was predicated upon is no more.

e. Under *section 27* of the Civil Procedure Act chapter 21 of Laws of Kenya, costs follow the events unless where for good cause the court orders otherwise. In this instance, I do not find any reasons to deviate from that edict and as the respondents have successfully defended the applications through their counsel, they are entitled to costs.

10. In view of the above determinations on the two applications dated the 12th May 2025 and 11th June 2025, the court finds and orders as follows:

a. That the two applications are without merit and are hereby dismissed.

b. That the applicants to pay the respondent's costs in both applications.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 15TH DAY OF OCTOBER 2025.

Kibunja, J.
MOMBASA.

S. M.
ELC

IN THE PRESENCE OF:
APPLICANTS : M/s Barayan
RESPONDENT : Mr. Wafula
KALEKYE-COURT ASSISTANT.

Kibunja, J.
MOMBASA.

S. M.
ELC