



REPUBLIC OF KENYA



KENYA LAW
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**Birya v Chimambo & 4 others (Environment and Land Case
64 of 2025) [2025] KEELC 6531 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6531 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 64 OF 2025
FM NJOROGE, J
OCTOBER 1, 2025**

BETWEEN

EZACKIEL CHENGO BIRYA PLAINTIFF

AND

KATANA CHIMAMBO 1ST DEFENDANT

LASCO CHIMAMBO 2ND DEFENDANT

BARAKA CHIMAMBO 3RD DEFENDANT

UHURU MLANGO 4TH DEFENDANT

HAMISI KAZUNGU MLANGO 5TH DEFENDANT

RULING

1. The application for determination is dated 10/6/2025 and the orders sought were framed as follows: -
 1.Spent;
 2. That this Honourable Court be pleased to issue an order of temporary injunction to restrain the Respondents by themselves or through any of his servants and/or agents from illegally trespassing, occupying, developing, demolishing and/or continuing with the demolition of any buildings or any other structures on, erecting any structure or further structures, letting out or in any way interfering with the suit land pending the hearing and determination of the main suit;
 3. That the Respondents be ordered to vacate Land Title Number Kilifi/Mtwapa/791;
 4. That the Officer Commanding Mtwapa Police Station do supervise compliance with this Honourable Court's orders;



5. That the Honourable Court be pleased to give any further Orders and directions as it may deem fit and just to grant;
 6. That the costs of this application be provided for.
2. The application was supported by an affidavit sworn on 28/5/2025 by Daniel Kahindi Kirimo, said to be the Plaintiff's appointed attorney. The application is premised on the following grounds: -
- (a) The applicant is the registered legal/beneficial proprietor of all that piece of land known as Kilifi/Mtwapa/791 with measurements of approximately 6.2 hectares or thereabouts (hereinafter referred to as the suit property);
 - (b) The Respondents have unlawfully entered on the Applicant's aforesaid property, caused actual bodily harm on the applicant and thereafter forcefully evicted the applicant from the premises;
 - (c) That the respondents have commenced demolition of the buildings and/or structures as well destruction of indigenous trees on the suit property;
 - (d) That without the consent of the applicant, the respondents have started erecting permanent structures on the suit property as well as letting out parts of the suit property to third parties;
 - (e) By reason of the Respondents' said actions, the Applicant's property has been wasted and continues to be wasted and the applicant has been deprived of the use and enjoyment of his suit property;
 - (f) The applicant's right to own and peacefully occupy/use the properties have been infringed upon by the respondents and unless restrained he will suffer irreparable loss and damage as the respondents will continue erecting permanent structures on the suit property and proceed to cause further damage to the sensitive eco system/environment;
 - (g) The Applicant is apprehensive that the Respondents unless prevented by this Honourable Court, intends to permanently invade and remain on the applicant's said property and continue to demolish the aforesaid structures without any authority or colour of right;
 - (h) That it is in the interest of justice that the orders sought be granted.
3. Service of court process is a fundamental procedural requirement that ensures that the principles of natural justice, particularly the right to be heard, are upheld. A party cannot be condemned unheard. On the other hand, where a party has been served with process and has failed to appear and defend the proceedings the court may issue appropriate orders in their absence. On 16/6/2025 when this matter came up for directions, this Court directed that the application be served forthwith on all Respondents and an affidavit of service be filed. I have perused the CTS, and I find that an affidavit of service has been filed. It is sworn by one Robert Chengo Gona on 10th July 2025. It is therefore clear that the Respondents were served with the application as directed but they never filed a response thereto.
4. The plaintiff applicant has exhibited title to the suit land known and identified as Kilifi Mtwapa/791. However, the orders he seeks are final in nature. They are the kind of orders that this court would issue upon hearing the plaintiff in the main suit. They are not fit for issuance at the interlocutory stage as they are mandatory in nature. It is trite that mandatory injunction orders can only be issued against a party



to a suit only in very special circumstances especially where the party has sought to steal a march on the applicant. This court will therefore not issue the said orders in the present application. The court has however noted that the plaintiff has already served summons upon the defendants and they have failed to appear for the hearing of the application. In the circumstances this court finds it very proper to fix an early date for the hearing of the matter on a formal proof for early disposal of this unopposed suit.

5. In the result, and for the foregoing reasons, the Notice of Motion dated 10/6/2025 dismissed. There shall be no order as to costs.
6. The plaintiff shall ensure that all his documents are in place ready for formal proof. A formal proof hearing shall be held on 11/11/2025.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 1ST DAY OF OCTOBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

