



REPUBLIC OF KENYA



KENYA LAW
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**Menza v Charo & 7 others (Environment and Land Case
E048 of 2025) [2025] KEELC 6957 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6957 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E048 OF 2025
EK MAKORI, J
OCTOBER 9, 2025**

BETWEEN

PETER KAHINDI MENZA PLAINTIFF

AND

KAHINDI KAZUNGU CHARO 1ST DEFENDANT

GARISON KARISA KONDE 2ND DEFENDANT

FERDINAND KAHINDI MALUMBO 3RD DEFENDANT

JOHN MALUMBO CHARO 4TH DEFENDANT

MAURICE MENZA 5TH DEFENDANT

CHANGAWA MBOGO MENZA 6TH DEFENDANT

KAZUNGU CHARO 7TH DEFENDANT

ABDALLA KAHINDI KAZUNGU 8TH DEFENDANT

RULING

1. The court is presented with a Preliminary Objection (PO) dated June 4, 2025, by the Defendants and an application for an injunction by the Plaintiff, dated May 13, 2025, which forms the basis of the legal issues before the court.
2. The court directed that the PO and the application be heard simultaneously, with parties filing written submissions.
3. This court has received and appreciates the submissions from all parties, which have provided valuable insights into the case.



4. Based on the materials before me, the issues for the court's decision are whether the PO is sustainable and whether the application before us has met the threshold set in the leading case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 for granting a temporary injunction.
5. The court's understanding of a PO, as outlined in the *Mukisa Biscuits Case* (supra), is that it is a point of law which, if raised, could potentially dispose of the suit.

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings and which, if urged, may dispose of the suit.”

6. The PO by the Defendants outlines and challenges the validity of the suit on the following grounds: This court lacks jurisdiction because the suit violates Section 29 and Section 30 of the [Land Adjudication Act](#). The suit also breaches Section 7 of the [Civil Procedure Act](#) regarding the doctrine of res judicata, on the grounds that the issues raised here have already been addressed by other quasi-judicial bodies, namely the Committees established under the [Land Adjudication Act](#). They argue that the suit is a clear abuse of due process of law. Therefore, the entire suit is fatally defective, incompetent, vexatious, and a gross abuse of court process, warranting its striking out with costs.
7. The Defendants argue that the final step was the case filed before the Adjudication Officer, registered as case number 116, concerning the property with plot number 1061. The 5th Defendant was the Defendant in that case, and at the conclusion, the applicant received plot 1734, which he occupied and where he had buried his family. The Defendants urge the Court to refer to the document marked as ‘MM-5,’ attached to the Respondent's replying affidavit dated June 10, 2025.
8. The Defendants argue that the objection falls within legal limits, as shown in the adjudication case mentioned above; the applicant's name is visible, and he cannot deny this fact, even though he concealed it in his pleadings. The issue originated from the adjudication process, which is relevant to the merits of the PO.
9. Contrarily, the Plaintiff argues that the adjudication process ended with the issuance of title documents Kilifi/Mwanda/Mnalamweni/1738, as evidenced by the title document issued to the Plaintiff on September 17, 2021. He contends that once a title is issued, the functions of the other quasi-judicial bodies cease, and the focus shifts to the court. Therefore, the doctrine of res judicata does not apply.
10. Section 29 of the [Land Adjudication Act](#) provides a mechanism for appeal to the Minister after the decision of the objection under Section 26 of this Act; an appeal must be filed within sixty days after the decision.
11. The jurisdiction of this court regarding parcels of land within declared adjudication sections is governed by Section 30 (1) of the [Land Adjudication Act](#) and Section 8 (2) of the [Land Consolidation Act](#). For clarity, Section 30 (1) of the [Land Adjudication Act](#) states the following:

“30(1) Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29 (3) of this Act.”



12. Section 8 (2) of the [Land Consolidation Act](#) provides as follows:

“No officer of any court whatever shall issue any plaint or other legal process for the institution or continuance of any proceedings which by virtue of the provisions of subsection (1) of this section are for the time being prohibited, except upon being satisfied that the consent required by those provisions has been given.”

13. The Court of Appeal interpreted the provisions of Section 30 (1) of the [Land Adjudication Act](#) in *Bhajee and another v Nondi and another* [2022] KECA 119 (KLR) (18 February 2022) (Judgment) as follows:

“The section therefore requires consent to be given before institution of civil proceedings concerning an interest in land in an adjudication section. The said consent is a condition precedent to a valid suit concerning disputes of land in an adjudication section and specifically requires the suits to be discontinued if started without consent. The section therefore clearly affects the power and jurisdiction of courts to hear and determine such disputes. The rationale for the said provisions is that there is an elaborate process that is laid down by the [Land Adjudication Act](#), on how to determine which persons are, and the extent to which, they are entitled to interests in the land under adjudication, and it is therefore necessary that it is first employed before resort is made to the Courts, and also shielded from unnecessary and unjustified abuses. Indeed, it has been severally held by this Court that where a dispute resolution mechanism exists outside courts, the same has to be exhausted before the jurisdiction of the courts is invoked. See in this regard the decisions in *Geoffrey Muthinja Kabiru & 2 others vs Samuel Munga Henry & 1756 Others* [2015] eKLR and *Mutanga Tea & Coffee Company Ltd vs Shikara Limited & another* [2015] e KLR.”

14. From what we already have, the adjudication process has concluded. The appeal to the Minister has been exhausted. An implementation process was included in the Minister's verdict. The Plaintiff has a title document. Whether that title was obtained against the decision of the Minister is an issue that this Court must resolve because the clock cannot turn back the adjudication process once it has been finalized.

15. On the ground that the title held by the Plaintiff conflicts with the Minister's decision and the quasi-judicial bodies under the [Land Adjudication Act](#) have been dissolved, the issue of fraud in the implementation of the Minister's award can only be tried in this Court; therefore, *res judicata* does not apply.

16. Therefore, the PO is unsustainable and is hereby dismissed.

17. Returning to the application for an injunction sought by the Plaintiff, it is argued that since the Plaintiff has title to the land duly registered in his name, and that from the various litigations in the past, the Respondents have no rights to the land, hence the application.

18. On the other hand, the Defendants contend that the title held by the Plaintiff conflicts with the Minister's decision, which outlined the manner in which the land was to be registered, and that the Plaintiff secretly registered himself as the absolute owner of the land, contrary to the Minister's decision.



19. For an injunction to be issued, the threshold to be met before granting it 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.”

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

21. 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.”

22. In this suit, we face two conflicting interests: that of the Plaintiff, who claims ownership of the suit property and asserts his name is registered after adjudication and previous court actions, and on the other hand, the Defendants, who claim that the title held by the Plaintiff contradicts the decision of the Minister. It is a fraudulent title.

23. At this stage, then, an injunction cannot be issued based on a title that is being challenged. It is a matter for trial.

24. Consequently, the application must also fail.

25. At the end, the Preliminary Objection (PO) dated June 4, 2025, and the Notice of Motion dated May 13, 2025, are hereby dismissed.

26. Costs in the cause.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 9TH DAY OF OCTOBER, 2025.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Ondieki for the Plaintiff

Mr. Piemo for the Defendants.

Happy: Court Assistant

