



**Patel v Dar (Environment and Land Case E075 of 2024)
[2025] KEELC 7477 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7477 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E075 OF 2024
EK MAKORI, J
OCTOBER 23, 2025**

BETWEEN

MURTAZA TURABALI PATEL PLAINTIFF

AND

ALIBHAI ADAMALI DAR DEFENDANT

RULING

1. The Applicant filed an application dated July 9, 2024, seeking the following orders:
 - a. This Court may be pleased to grant temporary injunctions restraining the Respondent, his agents, servants, employees, and/or assigns from selling, disposing of, dealing with, developing, or interfering with the Applicant's proprietary rights, interests, and ownership of Plot No. 1513/389 Takaungu-Kilifi, Plot No. 515 Malindi, and Plot MN/1/10 CR 6798/1 Kisauni pending the hearing and determination of this suit.
 - b. This Court be and is hereby pleased to order/direct the Respondent herein to give an account of dealings concerning Plot No. 1513/389 Takaungu-Kilifi, Plot No. 515 Malindi, and Plot MN/1/10 CR 6798/1 Kisauni, and that the Applicant be awarded shares of the same.
 - c. The costs of this application should be provided for.
2. The application is based on the grounds presented on the face of the application and the Supporting Affidavit of Murtaza Patel. The Applicant is the beneficiary and co-owner, holding an equal share in the referenced properties. The Respondent has been managing the properties exclusively for the benefit of the Applicant. The Applicant asserts his right to his share of the properties, which forms the basis of this application.
3. The Respondent, Alibhai Adamali, opposed the application and submitted a Replying Affidavit on June 11, 2025. He states the Malindi Plot was sold in 2007, with the Plaintiff receiving a share. The



Takaungu Plot was transferred to the Respondent and his siblings, and he claims the Applicant has no claim to it.

4. The court directed that the application be argued through written submissions. Mr. Lianza, for the Applicant, complied, while Mr. Kinyua, for the Respondent, chose to rely on the filed Replying Affidavit by the respondent.
5. Based on the materials and submissions presented before me, the main issue I frame for this court to decide is whether there are sufficient grounds to meet the threshold for issuing injunctions together with the associated costs.
6. The principles for granting an interlocutory injunction are outlined in *Giella v Cassman Brown* (1973) EA 58: It is well-established law and procedure that a claimant seeking an injunction must demonstrate that they have a prima facie case with a reasonable probability of success. They must also show that they will suffer irreparable harm that damages cannot adequately compensate for if the order is not granted. If the court is in doubt, it will decide the application based on the balance of convenience.
7. In the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal addressed the issue as follows.

“On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

8. The Applicant argues that, based on the affidavits of both the Applicant and the Respondent, it is clear that the Applicant has an interest in the properties mentioned above. The only issue is whether or not the Applicant was given their rightful share. It is evident that the Applicant is a beneficiary of the properties, and therefore, they have established a prima facie case. The Respondent has been managing the properties for a long period without accountability. The respondent cannot even provide the alleged record of sale or proceeds from the sale of one of the properties. The Applicant continues to suffer significant loss and prejudice that cannot be compensated with damages. The balance of convenience also favors the Applicant and aligns with the interests of justice for both parties. The Respondent will not be prejudiced if the orders requested are granted.
9. On the contrary, and as noted, in his replying affidavit, Alibhai Adamali Dar, the Respondent, stated that the Malindi Plot was sold in 2007 and that the Plaintiff received a share of the purchase price. The funds were deposited into a joint account at Imperial Bank Limited and were disbursed from that account. Due to the passage of time, the Respondent is still trying to locate the documents.
10. Imperial Bank Limited went into receivership in 2015 and is now in liquidation. It is impossible to obtain evidence of that payment, but a search is underway.
11. The Respondent further asserts that the property listed in CR. No. 12736 in Takaungu was transferred to Yusufali Adamali Dar (deceased), Alibhai Adamali Dar (himself), Amirali Adamali Dar (deceased), Hatimali Adamali Dar (deceased), and Fakhrudin Adamali Dar (deceased), all heirs of Adamali Alibhai



Adamji Dar, on December 20, 1985. The Plaintiff, his late mother, or grandfather did not own this property, and the Plaintiff has no claim to it. See a copy of the title and the transfer, marked "AAD1."

12. From the above, it is clear that the substratum of the suit property has changed. It was a while ago. Its foundation has been altered. There is nothing to restrain at this stage.

13. Consequently, the application dated July 9, 2024, is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 23RD DAY OF OCTOBER, 2025.

E. K. MAKORI

JUDGE.

In the presence of

Mr. Lianza for the Applicant

Mr. Kinyua for the Respondent

Happy: Court Assistant

