

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MOMBASA
ELEPET NO. 3 OF 2020

BAMBOO TWIST LIMITED
PETITIONER

VERSUS

NATIONAL LAND COMMISSION 1ST
RESPONDENT

MINISTRY OF LANDS, HOUSING
& URBAN DEVELOPMENT 2ND
RESPONDENT

CHIEF LANDS REGISTRAR 3RD
RESPONDENT

COUNTY LAND REGISTRAR, MOMBASA 4TH
RESPONDENT

THE ATTORNEY GENERAL 5TH
RESPONDENT

COUNTY GOVERNMENT OF MOMBASA 6TH
RESPONDENT

THE CABINET SECRETARY,
TRADE & INVESTMENTS 7TH
RESPONDENT

SPECIAL ECONOMIC ZONE AUTHORITY 8TH
RESPONDENT

AND

EMBASSY OF RWANDA 1ST INTERESTED
PARTY

AWALE TRANSPORTERS 2ND INTERESTED
PARTY

CONSOLIDATED WITH

ELC NO. 178 OF 2014

BAMBOO TWIST LIMITED
PLAINTIFF

VERSUS

JUMA SALIM TEMBER
SAHA TSOMWAKA MTORO..... 2ND
DEFENDANT
GATSI GOJAMA 3RD
DEFENDANT
MWATSUMO SALIM MWAMJENI..... 4TH
DEFENDANT
MASOOD SALIM MWAMJENI..... 5TH
DEFENDANT
MATANO SALIM MWAMJENI..... 6TH
DEFENDANT
ALFANI SALOM MWAMJENI..... 7TH
DEFENDANT
SHEE SALIM MWAMJENI..... 8TH
DEFENDANT
HAMISI SALIM MWAMJENI 9TH
DEFENDANT
MWICHANDE SALIM MWAMJENI..... 10TH
DEFENDANT
MWANAHAMISI SALIM MWAMJENI..... 11TH
DEFENDANT
JOSEPH LWAMBI..... 12TH
DEFENDANT
AWALE TRANSPORTERS LIMITED..... 13TH
DEFENDANT
THE REGISTRAR OF TITLES, MOMBASA..... 14TH
DEFENDANT
WILLIAM KAMITI GITHINJI..... 15TH
DEFENDANT

RULING

[NOTICE OF MOTION DATED 3RD OCTOBER 2025]

1. The petitioner moved the court through the notice of motion dated the 3rd October 2025, seeking for the following prayers inter alia:

- a. That the court issue a formal directive to the Officer Commanding Station (OCS) Maganda Police Station to ensure strict enforcement and compliance with the court orders issued on 14th November 2014 in ELC No. 178 of 2014, by taking all reasonable steps to stop further trespass and construction on the said parcels, and
- b. That the court to cite for contempt any individual, institution or security agency found to be in breach of the 14th November 2014 orders.

The application is based on the seven (7) grounds on its face and supported by the affidavit of Harji Govind Ruda, managing director of the petitioner, sworn on 3rd October 2025, in which he inter alia deposed that the petitioner is the registered proprietor of land parcels MN/V1/1128 and 1129, Miritini, Mombasa County; that on 14th November 2014, the court in ELC No. 178 of 2014 issued temporary injunction

order restraining Awale Transporters Ltd, the County Commissioner, and their agents from trespassing upon, fencing, excavating, or interfering with their possession of the said land; that ELC No. 178 of 2014 was later consolidated with ELCPET No. 3 of 2014, which became the lead file; that the temporary injunction orders remain valid within this petition, but despite their existence, illegal excavation, construction and fencing activities have resumed on plots numbers MN/V1/1128 and 1129 in the recent weeks, as seen in the attached photographs, that among others captures the administration police officers in uniform providing security to the ongoing works; that the petitioner wrote to the County Commissioner and Regional Police Commander on 17th September 2025 demanding compliance with the court order but no enforcement action was taken, and hence this application.

2. The application is opposed by the 2nd to 5th & 7th respondents through their grounds of opposition dated the 16th October 2025 summarized as follows:

a. That the application is misconceived, an abuse of court process and does not meet the threshold for contempt.

- b. That no orders of injunction are in existence, as they were never reinstated, or extended.
3. The application is also opposed by the 6th respondent through their grounds of opposition dated the 24th October 2025, summarized as follows:
 - a. That there are no injunctive orders that have been brought to the attention of the 6th respondent, and the application is a ploy to delay the petition.
 - b. That the application is ambiguous, imprecise, embarrassing to the 6th respondent, an abuse of court process and has not met the threshold for the orders sought to be granted.
 - c. That orders of injunctive nature are inconsistent with *section 16* of Government Proceedings Act.
4. The application was certified urgent on the 3rd October 2025, and directions on service and filing of replies were issued. The application was then fixed for hearing on 27th October 2025, when the learned counsel for the petitioner, 2nd to 5th & 7th respondents, and 6th respondent made their oral submissions, which the court has considered.

5. The following are the issues arising from the application dated 3rd October 2025 and learned counsel' submissions for the court's determinations:

a. Whether there is any injunction orders issued on 14th November 2014 in ELC No. 178 of 2014, and if so, whether it was in force at the consolidation of the suit with this petition.

b. Whether the petitioner has made out a case for the court to issue an order for police ensure strict enforcement and compliance with the court orders issued on 14th November 2014 in ELC No. 178 of 2014, by taking all reasonable steps to stop further trespass and construction on parcels MN/V1/1128 and 1129.

c. Whether the petitioner has met the threshold for any party/person to be cited for contempt.

d. Who meets the costs of the application?

6. The court has carefully considered the grounds on the application, affidavit evidence, grounds of opposition, oral submissions by the learned counsel, the record and come to the following conclusions:

a. That from the copy of the extracted order attached to the supporting affidavit, it is apparent that the court issued

orders on 14th November 2014 in Mombasa ELCC No. 178 of 2014, inter alia “.....restraining Awale Transporters Ltd, its agents particularly the County Commissioner, their employees, servants and or agents or assignees and or any person from trespassing upon, offering for sale, leasing and or interfering with the plaintiff’s use and quite [sic] enjoyment of all that portion of land known as plot No. 1128, 1129, 1130, 1131, 1132/V1/MN situated at Miritini pending the hearing of this application inter parties.” The heading of that order issued in Mombasa ELCC No. 178 of 2014 indicates the parties in that suit are as follows:

Bamboo Twist Limited

Plaintiff

Versus

Juma Salim Tembe & 12 Others

Defendants

And

Awale Transporters Limited & Another *Proposed*

Defendants

And

Registrar of Titles (MSA)

Proposed Defendant

b. That as the parties herein did not attach any other documents to confirm what happened to the application after the temporary injunctive order was issued, I have taken the liberty to peruse the record of Mombasa ELC No. 178 of 2014, and noted the following:

- i. That the ELC 3, Naikuni J, through the ruling of 24th June 2024 issued orders inter alia consolidating this suit with ELCPET No. 3 of 2020.
- ii. That a subsequent application dated 18th July 2024 by Awale Transporters Limited, 13th defendants, to inter alia review the orders of 24th June 2024 was declined through the ruling of 17th December 2024.
- iii. That court issued an order on 30th January 2025 directing the file to be brought to this court in view of the consolidation order.
- iv. That this court on 27th March 2025 directed that the proceedings in the consolidated suits would take place in Mombasa ELCPET No. 3 of 2020.

v. That from the heading of the rulings and documents in the file, the parties in the petition are indicated as follows:

Bamboo Twist Limited
Plaintiff

Versus

Juma Salim Tember & 11 Others 1st to 12th
Defendants

Awale Transporters Ltd 13th
Defendant

Registrar of Titles, Mombasa 14th
Defendant

William Kamiti Githinji 15th
Defendant

vi. That on 14th November 2014 prayers 1, 2, and 3 of the notice of motion dated 13th November 2014 were granted pending inter parties hearing in 14 days. Prayer 1 was for the application to be certified urgent, prayer 2 was for leave to enjoin the Registrar of Titles Mombasa, and prayer 3 was for temporary injunction to “restrain Awale Transporters Ltd, its agents particularly the County Commissioner, their

employees, servants and or agents or assignees and or any person from trespassing upon, offering for sale, leasing and or interfering with the plaintiff's use and quite [sic] enjoyment of all that portion of land known as plot No. 1128, 1129, 1130, 1131, 1132/V1/MN situated at Miritini pending the hearing of this application inter parties." There is nothing on the record to confirm whether the inter parties hearing took place within 14 days or at any other time.

vii. That the suit was dismissed on 1st March 2022 for want of prosecution, but reinstated through the ruling of 24th June 2024, pursuant to an application dated 1st December 2022 by the plaintiff.

c. That among the grounds of oppositions by the 2nd to 5th & 7th respondents was that no orders of injunction are in existence, as they were never reinstated, or extended. That ground is partly misplaced in view of the finding in (b)(vii) above, that clearly show that though the suit had been dismissed on 1st March 2022, it was subsequently reinstated through the ruling of 24th June 2024 in respect of application dated 1st December 2022. That means any

order that was in force before the dismissal of the suit was automatically revived upon the suit being reinstated.

d. It is however important to establish whether the temporary order issued on 14th November 2014 was in force by the time the suit was dismissed. That is important as I have observed in (b)(vi) above that I did not see any evidence that the inter parties hearing of the application dated 13th November 2014 took place within the 14 days directed or at any other time. Going by its heading, *Order 40* of the Civil Procedure Rules makes provision for temporary injunctions and interlocutory orders. *Rule 6* thereof provides for lapse of injunctions as follows:

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.”

In this instance, the order of 14th November 2014, not having been extended, at the lapse of fourteen days from the date of issue, it lapsed automatically. It follows that the injunction order issued on 14th November 2014, having

lapsed at the expiry of fourteen days thereafter, was not in force by the time this suit was dismissed on 1st March 2022, and could therefore not have been revived or extended when the suit was reinstated on 24th June 2024. To that extent, the 2nd to 5th & 7th respondents' ground that the injunction order was not extended is correct, and is upheld. It follows therefore that there were no injunction orders against the 13th defendant that was in force by the time Mombasa ELC No. 178 of 2014 was consolidated to Mombasa ELCPET No. 3 of 2020, that the 6th respondent in the petition, who was not a party in the other suit, could be expected to be bound by. The application is therefore without merit and is for dismissal.

- e. Though the petitioner has through the photographs attached to their supporting affidavit captured activities akin to excavation, construction, and fencing taking place that it alleges occurred on the suit properties on 17th September 2025, under the supervision of administration police officers, they have failed to establish the existence of valid injunction orders, that could be the basis of their prayers for at least, enforcement. The petitioner's application is therefore without merit and is for dismissal.

f. That as the petition is obviously for personal interests as opposed to public interest, and under *section 27* of Civil Procedure Act chapter 21 of Laws of Kenya costs follow the events unless where the court direct differently on good grounds, the petitioner will pay the 2nd to 7th defendants costs in the application.

7. That flowing from the above determinations on the petitioner's application dated 3rd October 2025, the court renders itself as follows:

- a. That the said application is without merit and is dismissed.*
- b. That the petitioner to pay the costs for the 2nd to 7th respondents who successfully opposed the application.*

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON 12TH THIS DAY OF NOVEMBER 2025.

S. M.
Kibunja, J.
ELC
MOMBASA.

IN THE PRESENCE OF:

PETITIONER : Mr Mitto

RESPONDENTS : Mr Kemei for Langat for 2nd to 5th Respondents and
Mr. Tajbhai for 6th Respondent.

NECHESAH-COURT ASSISTANT.

Kibunja, J.

MOMBASA.

S. M.

ELC

Original