

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCA NO. E029 OF 2025

NUREIN SAID MOHAMED
LEENA HASSAN ABDULKADER
APPELLANTS/APPLICANTS

VERSUS

ALFRED AGUNGA
RESPONDENT

RULING

1. For determination is a Notice of Motion application dated 14th May 2025 brought under Order 42 Rule 6 (6) of the Civil Procedure Rules, 2010, section 1A, 1B and 3A of the Civil Procedure Act and Article 159 (2) of the Constitution of Kenya, 2010. The orders sought were framed as follows: -

- 1)Spent;
- 2)Spent;
- 3) THAT pending the hearing and determination of the Appeal herein, the Honourable Court be pleased to issue a temporary injunction restraining the Respondent, his employees, agents and servants or anyone purporting to act on his behalf from undertaking any form of construction, development or any activity on the suit property known as Title No. Portion 7756 (Original No. 302/73 Malindi L.T 49 Folio 373 File No. 15385 situate at Kijiwetanga within Malindi;
- 4) THAT the OCS, Malindi Police station to assist in the enforcement of the above orders;
- 5) THAT the cost of this application be provided for.

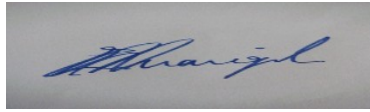
2. The Application was premised on the grounds listed in the notice of motion and supported by an affidavit jointly sworn by the Appellants on 14th May 2025. They deposed that they instituted **MLD MCELC No. E040 of 2025** before the Magistrate’s Court at Malindi against the Respondent over **Title No. Portion 7756 (Original No. 302/73 Malindi L.T. 49 Folio 373 File No. 15385)**, registered in their names, seeking

declaratory and injunctive reliefs to restrain the Respondent from acts of trespass. They stated that interim injunctive orders were issued on 11th March 2025, but the trial court subsequently on 7th May 2025 upheld a Preliminary Objection dated 15th April 2025, striking out the suit on grounds that it was *res sub judice* ELC Case No. E044 of 2023.

3. The Applicants averred that the Respondent thereafter commenced construction of a perimeter wall on the suit property, thereby threatening to defeat their proprietary interests. Being aggrieved by the ruling delivered on 7th May 2025, they have lodged the present appeal and now seek injunctive orders pending the hearing and determination of the appeal. They contended that unless the orders sought are granted, the Respondent will continue developing the property, rendering the appeal nugatory and occasioning them irreparable loss and prejudice. The application, they added, has been made without unreasonable delay and is brought pursuant to Order 42 Rule 6(6) of the Civil Procedure Rules, 2010.
4. The Respondent, **Alfred Agunga**, swore a replying affidavit on 9th June 2025 opposing the application. He deposed that he had purchased **Portion Numbers 7755 and 7756** in 2016 from one **Mariyam Wanjiru Gicharu**, took possession, and had been in continuous occupation of the property since then. He stated that he had developed the land by constructing a perimeter wall, borehole, pit latrine, and semi-permanent houses, and that his workers had remained in occupation.

5. The Respondent further deposed that the Applicants unlawfully entered the property in **February** and **March 2025**, demolished sections of the wall, parked machinery thereon, and violently attacked his workers, resulting in injury and loss of life, incidents which were under police investigation. He added that following the trial court's ruling upholding his preliminary objection, he only secured the property pending the conclusion of the investigations. He maintained that granting the injunction sought would interfere with ongoing criminal investigations and cause him irreparable loss as the people living therein shall be evicted. He therefore urged the Court to dismiss the application with costs.
6. On 12th June 2025, when the application came up for hearing, Mr. Salim, learned counsel for the Appellants, was granted leave to file a supplementary affidavit and given fourteen (14) days to file both the said affidavit and submissions in support of the application. The Respondent was similarly granted fourteen (14) days from the date of service to file his submissions in response. By the time of the expiry of the periods given, the said directions had not been complied with. Neither have they been complied with to date.
7. Litigants are obligated to adhere strictly to court orders and timelines, and failure to do so undermines the orderly administration of justice.
8. In the circumstances, the application is hereby dismissed for want of compliance with the Court's directions.

Dated, signed and delivered at Malindi on this 4th day of November, 2025.

A rectangular box containing a handwritten signature in blue ink, which appears to read "Mwangi Njoroge".

**MWANGI NJOROGE
JUDGE, ELC, MALINDI.**