



**Pembe v Mwinyi & 5 others (Environment and Land Petition
E131 of 2025) [2025] KEELC 18444 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18444 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND PETITION E131 OF 2025
FM NJOROGE, J
DECEMBER 18, 2025**

BETWEEN

PEMBE CHANGAWA PEMBE PLAINTIFF

AND

OMAR MWINYI & 5 OTHERS & 5 OTHERS DEFENDANT

RULING

1. The application dated 22nd September 2025 seeks an order of injunction against the defendants and their agents, restraining them from in any way interfering with the plaintiff's quiet possession and occupation of plot number MN/ III/ 67 pending the hearing and determination of the suit.
2. The application is supported by the affidavit of the plaintiff of even date. The grounds upon which the application is made are that the applicant is the lawful owner of the suit land by virtue of prescriptive rights, and he has been in peaceful occupation thereof; the defendants have trespassed onto the suit property cut down trees and pulled down the fence and are intent on settling thereon. They have also threatened the plaintiff and demanded that he vacates the suit property in default of which they have expressed an intention to evict him therefrom. The applicant states that the defendants have no title to the suit land and they have no interest whatsoever in it, and neither do they have any orders of eviction of the plaintiff from the suit property. He alleges that the defendants have sought and got the consent of the County Government of Kilifi to enter the suit property and evict the plaintiff without following the due process of law, and that their actions amount to trespass and unlawful eviction, hence necessitating the intervention of this court. In his supporting affidavit he refers to Malindi Misc. ELC JR Number 3 Of 2024 in which he sought reconstruction of the Land Register for the suit parcel or provision of the records in respect of that person to him by the land registrar Mombasa. That Judicial Review application was directed at the County Land Registrar Mombasa alone. In the judicial review it is alleged that the plaintiff herein is the beneficial owner of the suit property by virtue of prescriptive rights over it, by virtue of a long period of occupation possession and use for over 20 years.



3. The application is opposed through the affidavit of Bernard Gitonga Kiogora, who swears it on behalf of the 1st, 2nd, 3rd and 5th defendants. The deponent states that the sole aim of the applicant is to dispossess the rightful owners of the property. It is stated that the applicant has, contrary to his averments, never been in occupation of the suit property, and he only began making sporadic attempts at construction thereon in or about May 2025. Before that, he had no structures or crops or any form of development on the suit land; that his sudden entry and activities on the land were calculated to create an appearance of ownership in anticipation of this dispute; that the 1st and 2nd respondents are the lawful owners of the suit property, the same having belonged to their late father, and they are currently in the process of confirming the grant in respect of his estate which will ultimately facilitate the transfer of the suit property to them as beneficiaries. It is stated that the coconut trees on the suit land not belong to the applicant; that the applicant has demolished a fence erected by the respondents to demarcate their land; that the 3rd and 4th defendants are owners of neighboring properties, and their only involvement in this matter arose from their efforts to urge the applicant to cease his unlawful encroachment and maintain peaceful coexistence along the boundary separating their properties and the suit property. The 1st and 2nd respondents, together with the 3rd and 4th respondents requested the applicant to desist from interfering with a suit property but he, in order to divert attention from his acts of trespass, proceeded to make false allegations at various Police Stations to the effect that his life had been threatened thus resulting in a criminal case against the 3rd defendant who has been charged with the fence of threatening to kill; that however the 3rd defendant has no interest in the suit property and is only a neighbor concerned with boundaries; that the applicant encroached on the defendants' land under the mistaken belief that they lacked any documentary proof of ownership, but the respondents are in possession of valid ownership documents which they will produce before this court; that the applicant has failed to demonstrate any lawful or recognizable interest in the suit property and his only claim is that he was allegedly born and raised on the land, which the defence disputes. They state that he has no locus standi to seek injunctive orders or other relief relating to the said property. They accuse him of material non-disclosure and thus unclean hands before a court of equity.
4. The plaintiff filed supplementary affidavit dated 28th October 2025 in which he stated as follows: that his long use of the suit property has bestowed upon him ownership rights as against third parties including the absentee owner; that he moved Court in the year 2023 in Malindi Miscellaneous Application Number E018 of 2023 as his first step towards processing title to the suit property; that he has not encroached and or trespassed on the suit property as he has always been thereon, and he has a house thereon where his family resides; that he does not know the owner of the suit property; that the defendants here in who came forward late in the year 2024 and attempted to grab the land; that he has never been served with any documents showing that the defendants are entitled to the suit property including any Grant issued in succession proceedings; that his claim to the suit property is solely by virtue of prescriptive rights and interest accrued over a long and exclusive possession use and control of the suit land. The defendants have not shown that they have a better title to the suit property.

Analysis and Determination

5. The sole issue arising for determination before this court is whether an order of injunction against the defendants is deserved. This court has noted that no title has been attached to the application by the plaintiff. However, in respect of the plaintiff, this is not surprising in view of the fact that the plaintiff has expressed that what he claims are prescriptive rights and interests as accrued by operation of the law.



In his annexure which is in the form of a copy of the judicial review application dated 13th February 2024 in ELC JR Number 3 of 2024 he has stated as follows:

“ That the applicant is a beneficial owner of the suit property by virtue of prescriptive rights over the suit property by a long time of occupation and possession and use;

...that the expert applicant’s efforts to process title have been hampered or hindered by the county land registrar’s failure to grant him access to the register or to provide him with copies of the record and documents in respect of the suit property.”

6. The 1st to 4th defendants have also not exhibited any documents of title in their replying affidavit. This appears to be the case of two parties who have not yet, at the interlocutory stage, been able to show prima facie evidence of registered title. However, while the plaintiff has laid claim to the suit land by way of prescriptive rights and proved locus standi, the defendants, despite not producing title in their name, do not claim to be resident on the suit land or to be currently utilizing it for any purpose.
7. Having considered the application before me as well as the response, and the filed submissions against the 3 pronged test for grant of injunctions in *Giella vs Cassman Brown* [1973] EA 358, it appears to this court that this application is one that must be disposed of simply on a balance of convenience. It thus appeals to this court to preserve the present status of the land pending the hearing and determination of this suit so that both parties can ventilate their respective claims and prove ownership of the suit land at the main hearing.
8. I therefore order that the prevailing status quo with regard to the suit land on the ground and in the titles register shall be preserved by all parties pending the hearing and determination of the current suit.
9. All parties shall comply with the rules by filing their trial bundles and other requisite documents, if they have not done so by this date, with the plaintiff taking up the first 30 days after the date of this ruling and the defendants taking up the following 30 days for the purpose. This suit shall be mentioned on 26th February 2026 for issuance of a hearing date.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 18TH DAY OF DECEMBER 2025.

MWANGI NJOROGE,

JUDGE, ELC, MALINDI.

