



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ndatani Enterprise Limited & 22 others v Kombo & 78 others (Environment and Land Case E002 of 2025) [2026] KEELC 592 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 592 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E002 OF 2025**

**YM ANGIMA, J  
FEBRUARY 5, 2026**

**BETWEEN**

**NDATANI ENTERPRISE LIMITED & 22 OTHERS ..... PLAINTIFF**

**AND**

**MADZAYO NDEGWA KOMBO & 78 OTHERS ..... DEFENDANT**

**RULING**

**A. Introduction**

1. Madzao Ndegwa Kombo and 2 others (representing over 300 residents residing on Land Parcel No. 274/I/MN) filed an Originating Summons dated 01.08.2021 against Timothy Isaac Bryant and Leah Nthambi Bryant and two others in ELC 148 OF 2021 seeking, inter alia, adverse possession of the suit property. The defendants therein sought to convert the suit into a plaint to enable them file a defence and counterclaim. The court allowed the same and the plaintiffs therein filed a plaint dated 15.01.2025 and sought the following orders against the defendants;
  - a. A declaration that the title deed to the 1<sup>st</sup> and 2<sup>nd</sup> defendants in respect of Land Parcel No. 274/I/MN and all entries thereto stand revoked and cancelled.
  - b. An order directed at the 4<sup>th</sup> defendant compelling him to effect revocation and cancellation in prayer (a) above.
  - c. A declaration that the plaintiffs have acquired title to Land Parcel No. 274/I/MN by *Limitation of Actions Act* and by virtue of the doctrine of adverse possession.
  - d. An order directed at the 4<sup>th</sup> defendant compelling him to enter the plaintiffs' names in the register as proprietors of Land Parcel No. 274/I/MN and title deeds be issued in their names.
  - e. A permanent injunction do issue to prevent the 1-3<sup>rd</sup> defendants by themselves, their servants, employees, agents or otherwise however from selling, leasing, subdividing, entering the suit



property or demolishing the plaintiffs' houses and/or properties, structures thereon and/or evicting the plaintiffs, their families and/or tenants or in any other manner whatsoever interfering with the plaintiffs' and/or their tenants' quiet and peaceful occupation of the suit property.

- f. Interest on (f) above.
  - g. Any other relief as the court may deem fit.
2. The defendants therein responded with a defence and counterclaim dated 20.08.2025 and sought the following orders against the plaintiffs therein;
1. A permanent injunction restraining plaintiffs from entering upon, remaining, and continuing in occupation, constructing, or in any other way interfering with the 1<sup>st</sup> and 2<sup>nd</sup> defendants' quiet possession and enjoyment of the suit property namely Plot No. 11286/I/MN and Plot No. 11287/I/MN.
  2. A mandatory injunction compelling the plaintiffs by themselves, their servants and/or agents at their own costs to demolish the constructions erected on the suit property, remove and dispose of the materials from the suit property, and to so demolish, remove and dispose the materials at the plaintiffs' costs.
  3. Damages for trespass.
  4. Vacant possession of property
  5. An order directing the County Commander of Mombasa to ensure full implementation of the Decree of this honorable court.
  6. Costs together with interest.
3. It is also evident from the material on record that vide a plaint dated 16.01.2025 the plaintiffs sued the defendants herein seeking recovery of the various subdivisions of the original suit property. The plaintiffs pleaded that they were the registered proprietors of the subdivisions and they considered the defendants to be mere trespassers thereon. As a result, they sought, inter alia, an order of vacant possession; an order compelling the National Police Service to evict the defendants; and a permanent injunction restraining the defendants from subdividing, selling or transferring the properties.

#### **B. 1<sup>st</sup> to 75<sup>th</sup> Defendants' Application**

4. By a notice of motion dated 25.04.2025 brought pursuant to Order 2 Rule 15 and Order 51 Rule 1 of the Civil Procedure Rules (Rules), Sections 1A, 1B, 3A and 6 of the *Civil Procedure Act* and all other enabling provisions of the law, the defendants in the instant suit sought the following orders:
1. The plaintiff's suit to be struck out with costs to the 1<sup>st</sup>- 75<sup>th</sup> defendants.
  2. Pending the inter-partes hearing of this application, an order be issued staying any further proceedings in this case.
  3. Pending the hearing and determination of Mombasa ELC No. E148 of 2021 Madzo Ndegwa Kombo and 2 others v Timothy Isaac Bryant and 3 others an order be issued staying any further proceedings in this case.
  4. This honorable court do issue any other orders it may deem just, fit and expedient in the interest of justice.



5. The costs of this application be borne by the plaintiffs.
5. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Madzayo Ndegwa Kombo on 25.04.2025. It was contended that the defendants had instituted ELC No. E148 of 2025 against Timothy Isaac Bryant and Leah Nthambi Bryant and 2 others, seeking, inter alia, ownership of Plot No. 274/I/MN by way of adverse possession. It was further contended that this suit raises ownership issues of the said suit property which is directly and substantially in issue in ELC No. E148 of 2021. It was argued that this suit is sub judice and the court was urged to strike out the suit for being an abuse of the court process or to stay the proceedings herein pending the hearing and determination of the other suit.

### **C. The plaintiffs' Response**

6. The plaintiffs opposed the application vide a replying affidavit sworn by Dr. CPA Alexander Muema Muthengi the 1<sup>st</sup> plaintiff's director on 04.07.2025. They conceded the existence of ELC No. 148 of 2021, but contended that the filing of the instant suit was necessitated by the defendants' failure to comply with the directions of the court. It was contended that though the defendants were directed to file and serve their plaint on 28.10.2024, they took more than three months to comply and only filed the said plaint on 24.01.2025. The plaintiffs argued that they could not have stayed in limbo for that long hence they found it necessary to file this suit.
7. It was further contended that the plaintiffs filed this suit out of necessity to protect their interests and prevent the defendants from invading the suit property using the orders issued in ELC No. E148 of 2021. The plaintiffs also contended that at the time of filing the suit they were not parties to ELC No. E148 of 2021. It was the plaintiffs' case that the instant application was merely designed to delay the determination of this suit hence they urged the court to dismiss the same with costs.

### **D. Directions on Submissions**

8. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The defendants filed submissions in support of their application on 24.10.2025 while the plaintiffs filed submissions on 03.11.2025.

### **E. Issues for Determination**

9. The court has perused the application, the response thereto and the material on record as well as the submissions made by all counsel. The court is of the view that the following key issues arise for determination herein:
  - a. Whether the suit herein should be stayed or struck out.
  - b. Who shall bear the costs of the application.

### **F. Analysis and Determination**

#### **a. Whether the suit should be stayed or struck out**

10. Section 6 of the *Civil Procedure Act* provides for the principle of sub judice and stipulates as follows:

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under



the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

11. There is no dispute that the defendants herein filed ELC No. E148 of 2021 as an Originating Summons dated 01.08.2021 against Timothy Isaac Bryant and Leah Nthambi Bryant claiming Plot No 274/I/MN by way of adverse possession. On 30.07.2024 the court directed the conversion of the said originating summons into a plaint. On 15.01.2025, the plaintiffs therein filed a plaint on 15.01.2025 adding Ndatani Enterprise Company Limited and the Land Registrar as the 3<sup>rd</sup> and 4<sup>th</sup> defendants. From the evidence on record, the plaintiffs herein were served electronically with the pleadings in ELC No. E148 of 2025 on 24.01.2025, which is after this suit was instituted on 16.01.2025.
12. From the amended plaint, it appears the issue before the court is the ownership of subdivisions emanating from the original mother title of Plot No. 274//I/MN. A perusal of the plaint in ELC No. E148 of 2021 makes it clear that the issue before the court is a claim over the suit property on account of adverse possession. There are two competing claims on the same parcel of land whereby one side is asserting ownership by registration whereas the other is asserting ownership by way of adverse possession. While the two are separate suits they are capable of being disposed of together since there are common questions of law and facts arising in both suits.
13. The court is of the view that consolidation of the two suits would facilitate the expeditious disposal of the cases as intended by Order 11 Rule 3 (h) of the Civil Procedure Rules. The Supreme Court held in *Law Society of Kenya v Centre for Human Rights and Democracy & 12 others* [2014] KESC 29 (KLR) that;

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it. In the matter at hand, this court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the court must be satisfied that no injustice would be occasioned to the respondents if consolidation is ordered as prayed.”
14. The court is called upon to determine similar questions of law and fact on the disputed property. The evidence to be relied upon as well as the witnesses to be availed during the trial are likely to be the same too. In addition, any orders issued in one suit are likely to have a bearing on the other hence it is only logical that the suits be consolidated. Moreover, the court does not find that any of the parties stands to suffer any prejudice if the suits are consolidated for trial and disposal. The court is therefore inclined to exercise its discretion to order consolidation of the two pending suits.

**(b) Who shall bear the costs of the application**

15. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. Though the defendants have not been successful in their application the court is of the view that they should be condemned to bear any costs. The court has considered the application and decided to consolidate the two suits on its own motion. As such, the court is of the view that costs should be in the cause.



## **G. Conclusion and Disposal Order**

16. The upshot of the foregoing is that the court finds and holds that the 1<sup>st</sup> to 75<sup>th</sup> defendants' application dated 25.04.2025 is not merited. As a consequence, the court makes the following orders for the disposal thereof:

- i. That the 1<sup>st</sup> to the 75<sup>th</sup> defendants' application dated 25.04.2025 is hereby dismissed.
- ii. That an order is hereby made consolidating ELC No E148 of 2021 and ELCLC E002 of 2025 for trial and disposal.
- iii. That the case file ELC No. E148 of 2021 shall be the lead file where all the proceedings shall henceforth be recorded.
- iv. The consolidated suits shall be mentioned on 17.02.2026 for directions on trial.
- v. The costs of the application shall be in the cause.

Orders accordingly

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026.**

.....

**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Mr. Mkomba for the plaintiffs

Mr. Mramba for the 1<sup>st</sup> – 75<sup>th</sup> defendants

N/A for the 90<sup>th</sup> defendant

N/A for the 112<sup>th</sup> – 115<sup>th</sup> defendants.

