

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELCLC NO. E108 OF 2024

CHARLES JUMBALE KITI PLAINTIFF

VERSUS

KUYUGA MASHA MUNGA

DAVID OCHIENG

MICHAEL OUMA OSINO

JACKSON ODONGO

DEFENDANTS

RULING

1. By a Notice of Motion dated 5th March 2025, Charles Jumbale Kiti (the Plaintiff/Applicant) prays for orders as follows:

1. Spent;

2. That the Honourable Court be pleased to grant orders of temporary injunction against the Respondents themselves, their agents, servants and/or such persons claiming under the Respondents by restraining them from demolishing, evicting, leasing, selling, alienating, transferring, dealing or in any (way) interfering with the Applicant's occupation of

the said land more particularly known as Plot Madeteni Settlement Scheme/580 pending the hearing and determination of the instant suit;

- 3. That the Honourable Court be pleased to grant orders of mandatory injunction against the Respondents themselves, their agents, servants and/or such persons claiming under the Respondents by restraining them from purporting to trespass, carrying out stone cutting, leasing, constructing, erecting, wasting, damaging, intruding, selling, alienating, developing, disposing, transferring, dealing or in any (way) interfering with the Plaintiff/Applicant's occupation of the land more particularly known as Plot No. Madeteni Settlement Scheme/580 pending the hearing and determination of the instant suit.**
- 4. That the Officer Commanding Matsangoni Police Station do provide security during enforcement and compliance of the orders above;**
- 5. That the Honourable Court be pleased to make such further or other orders as it may deem**

just and expedient in the circumstances of the case; and

6. That the costs of this application be provided for.

2. The application which is supported by an Affidavit sworn by the Plaintiff is premised on the grounds that:

a) The Plaintiff is the proprietor of the suit premises situated at Matsangoni having acquired and/or assumed ownership from their ancestral parents and having been born thereon for (50) years;

b) The Defendants have forcefully invaded and/or trespassed onto the land wherein they are now cutting stones;

c) That Applicant is the legal and beneficial owner of the suit premises having acquired the same from his grandparents;

d) The Applicant is the owner of the suit property having properly acquired the same when land adjudication (was done) in the area.

e) The Defendants acts of the trespass are wrongful and illegal and they should be restrained from continuing to carryout stone cutting, constructing on and/or dealing with the suit property;

f) The Respondents have sent unknown persons to the parcel of land which persons have since started building structures and houses on the land without the Plaintiff's authority; and

g) Unless further acts of trespass are stopped by an order of the Court the Applicant stands to suffer loss and damage.

3. Kuyuga Masha Munga (the 1st Defendant/Respondent) is opposed to the application. In a Replying Affidavit sworn on 23rd June 2025, the 1st Defendant avers that the suit property was adjudicated to him on or about the year 1994 through the Government adjudication office. It is further the 1st Defendant's case that he is the legal and beneficial owner of the land having been issued with a letter of offer and having paid for the same.

4. I have carefully perused and considered both the Plaintiff's application as well as the response thereto by the 1st Defendant. I have similarly perused and considered the submissions placed before the Court by the Learned Advocates representing the parties.
5. By this application before the Court, the Plaintiff prays for both a temporary and mandatory orders of injunction to issue restraining the four (4) Defendants from dealing with a parcel of land described as Plot No. 580 Madeteni Settlement Scheme. It is the Plaintiff's case that he is the proprietor of the said parcel of land having inherited the same from his grandparents and his father who had since passed on. He accuses the Defendants of trespassing onto the land and damaging the same by cutting stones therefrom for sale.
6. On his part, the 1st Defendant denies that he has trespassed onto the land. On the contrary, the 1st Defendant asserts that the said property was adjudicated to himself way back in the year 1994 and that he has since been using the same without any interference.

7. In respect of temporary injunctions, Order 40 Rule 1 of the Civil Procedure Rules provides as follows:

“Where in any suit it is proved by affidavit or otherwise-

- a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or**
- b) That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit,**

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal, or disposition of the property as

the court thinks fit until the disposal of the suit or until further orders.”

8. As was held in the celebrated case of ***Giella -vs- Cassman Brown (1973) EA 358***:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

9. In ***Mrao -vs- First American Bank of Kenya Limited & 2 Others (2003) KLR 125***; the Court of Appeal defined a prima facie case as follows;

“..... a prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that

there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

10. In the matter herein the Plaintiff asserts that he is the proprietor of the suit property having acquired ownership thereof through his parents and having been on the land since the time he was born. The Plaintiff accuses the Defendants of having recently invaded the land which they now use as a stone quarry.
11. In order for the Plaintiff to prove that he had any interest in the suit property, it was incumbent upon the Plaintiff to demonstrate either that he was the registered owner thereof and/or that he had beneficial interest in the land. Unfortunately for the Plaintiff, other than the averments that he inherited the land from his father, there was nothing else placed before the Court to substantiate his claim. The Plaintiff had no title to the land and he did not place anything before the Court from which one could deduce that the land belonged to his family.

12. Indeed, contrary to his assertion that he had lived on the land for more than 50 years, the Plaintiff has annexed to the Supporting Affidavit a letter addressed to himself and the 1st Defendant dated 13th November 2024 by the Land Adjudication and Settlement Officer, Kilifi in regard to Plot No. 580 Madeteni Settlement Scheme (Annexure CJK 1). A perusal of that letter reveals that it was written following a complaint made by the Plaintiff to that office after which a ground visit was conducted on the disputed property.

13. Contrary to the Plaintiff's claim that he resides on the property, the said letter concludes as follows:

- “ - That it is true that Mr. Kayuga Masha is extracting building blocks on the plot.**
- That only a small portion of the land remains with some primary vegetation consisting of some thickets.**
- There is no house on the land.**

The office is therefore investigating the matter further in a bid to come up with a solution.

As a result, both of you are therefore advised to maintain Status Quo until the matter is resolved to finality.”

14. Arising from the foregoing, it was clear to me that the said Land Adjudication Office had at that time nothing to show that the land belonged to the Plaintiff and they undertook to carry out further investigations. It was further their finding that the 1st Defendant was utilizing the land and that no one resided thereon. That being the case, I was not persuaded that the Plaintiff had demonstrated a prima facie case with a probability of success at the trial.
15. In the premises, I was not persuaded that there was any merit in the Motion dated 5th March 2025. The same is dismissed with costs to the 1st Defendant.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 5th day of March, 2026.

.....
J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Ondieki holding brief for Shimaka Advocate for the Plaintiff/Applicant

c) No Appearance for the Defendants/Respondents

Original