



REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU

ENVIRONMENT AND LAND CASE NO E018 OF 2024

DENNIS KIMANTHI KITHUKU.....PLAINTIFF/APPLICANT

VERSUS

PAUL JAMES KIOKO.....1ST DEFENDANTS/RESPONDENT

WAMBUA KIOKO.....2ND DEFENDANT/RESPONDENT

BENARD MUTISO.....3RD DEFENDANT/RESPONDENT

RULING

THE APPLICATION

The application before me is dated 28/5/2024. It was filed by the plaintiff in person. It seeks the following main orders, other prayers having been spent:

- 1) That this honourable court be pleased to grant a temporary order of injunction order against the defendants, their servants, agents and whomsoever from entering, trespassing, digging deep excavation, construction, demolishing constructed walls/roofing materials, denying access, selling, disposing of or undertaking further developments on the plaintiff's plot No. 9 Matiliku market, pending the hearing and determination of the main suit;
- 2) That the officer commanding Emali police station and Matiliku police station to enforce compliance;

The application is supported by an affidavit sworn by the Plaintiff and is premised on the following grounds:

- a) The plaintiff/applicant is a lawful beneficiary of the estate of the late Kithuka Ikusu alias Kithuku Ikusu who is the registered owner of plot No. 9 Matiliku market;
- b) The defendants have trespassed onto the suit property, occasioned extensive damage through digging deep excavation with intention to commence unlawful constructions, demolished construction/roofing materials on the suit property which they carried away to unknown destination and denied the plaintiff access;
- c) That the plaintiff's deceased father was never a co-owner with Paul Kioko Kiamba
- d) It is in the best interest that a permanent injunction be granted and the plaintiff be allowed to exclusively use the land.

In the affidavit in support of the application, the Plaintiff reiterated the grounds on the face of the application and annexed copies of documents in support of the application.

ISSUE OF REPRESENTATION OF THE PLAINTIFF

Before delving further into the merits of the application, I wish to address the issue of representation of the plaintiff by counsel. The suit and application dated 28/5/2024 were filed by the plaintiff in person, although the font and style indicates that the same could have been drafted by the firm of advocates currently appearing for him. The application was prosecuted by the firm of GICHUHI KIVINDYO & ASSOCIATES ADVOCATES who filed submissions on the same. I have perused the entire record but I have not seen any notice of appointment of Advocates by the plaintiff. This implies that the firm of Gichuhi Kivindyo & Associates Advocates are strangers in this matter.

Order 9 rule 7 of the Civil Procedure Rules provides:

“Where a party, after having sued or defended in person, appoints an advocate to act in the cause or matter on his behalf, he shall give notice of the appointment, and the provisions of this Order relating to a notice of change of advocate shall apply to a notice of appointment of an advocate with the necessary modifications”. (Emphasis supplied)

In my view, failure by counsel to file a notice of appointment cannot be overlooked as a mere procedural technicality. The notice is what gives counsel authority to act for the plaintiff. The issue of authority of counsel goes to the substance of the proceedings.

DISPOSITION

Given the circumstances, I am unable to determine an application prosecuted by a stranger. In the interest of justice, I will refrain from considering the merits of the application at this stage and direct as follows:

- a) All the documents filed by Gichuhi Kivindyo & Associates Advocates on behalf of the plaintiff are hereby expunged from the record;
- b) The plaintiff is at liberty to regularize the record and seek fresh prosecution of the application dated 28/5/2024.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 28TH DAY OF
OCTOBER, 2025.**

**Y.A SHIKANDA
SENIOR PRINCIPAL MAGISTRATE.**