



**Mwazama & 16 others v Fondo & 3 others (Land Case E137 of 2025) [2026] KEELC 2803 (KLR) (12 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2803 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
LAND CASE E137 OF 2025  
FM NJOROGE, J  
MAY 12, 2026**

**BETWEEN**

**SAMMY HAEBER MWAZAMA & 16 OTHERS & 16 OTHERS & 16 OTHERS ..... PLAINTIFF**

**AND**

**MUTSUNGA SAID FONDO & 3 OTHERS & 3 OTHERS & 3 OTHERS ..... DEFENDANT**

**RULING**

1. The Notice of Motion dated 29<sup>th</sup> September 2025 seeks an order of temporary injunction against the defendants to restrain them from in any manner interfering with the land known as Kilifi/Mwanda Mbalamweni/ 3332,3359,3437,3462,3498,2107,3431,3435,3463,3438,3434,3432,3480,3492, 3617,3436,3492, and 3440.
2. The grounds on which the motion is premised are that the plaintiffs are the registered owners of the suit lands and that there is risk of interference with their titles by the defendants while the latter are purporting to enforce an order issued by the court on 3/5/2025 in Malindi ELC E024 of 2021.
3. Using that order the defendants have been harassing the plaintiffs by entering their lands and planting beacons thereon and purporting to intimidate them by use of goons.
4. The plaintiffs aver that their titles were issued to them pursuant to allocation of the land to them by the land adjudication office. their parcels had not been included in the previous litigation whose decision the defendants are attempting to enforce.



## Defendants' Response.

5. The application is opposed by the defendants through the affidavit sworn by the 3<sup>rd</sup> defendant on their behalf and with their authority. He deposes in that affidavit that the applicants have not demonstrated ownership of the suit lands in the absence of a current certificate of official search; that the alleged title documents of the plaintiffs were cancelled by the Arbitration Tribunal in 2020 for fraud and illegality and the award was adopted by the court in Malindi Elc Misc Appl 24 Of 2021 whose decree has already been executed as seen herein after; that upon such nullification the property was restored to the plot number Kilifi/Mwanda Mbalamweni/ 985; that the said Kilifi/Mwanda Mbalamweni/985 was later on subdivided and new titles issued being Kilifi/Mwanda Mbalamweni/ 4549-4555 and it was closed upon such subdivision; that the plaintiffs participated in the arbitral proceedings as defendants and were thus aware of the litigation surrounding the land and they are coming after a delay of about 5 years to this court for relief; that the plaintiffs never challenged the findings of the tribunal and the matter is res judicata hence lack of jurisdiction on this court's part; that new parties have commenced the occupation of the land;
6. The application was disposed of by way of written submissions of the parties which both parties filed. I have considered those submissions in the preparation of the present ruling.
7. The issue arising is whether the plaintiffs have satisfied the principles of interim injunctions set out in *Giella vs Cassman Brown* 1973 EA 358.
8. This court has considered that the plaintiffs have in their possession titles in their names. The plaintiffs also rely on the signed Adjudication Record that led to the issuance of their titles. Section 26 of the [Land Registration Act](#) states as follows:

“26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
  - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
  - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

9. The plaintiffs aver that those titles are yet to be cancelled. The process by which the defendants' titles were issued is of great interest in this matter, especially if the same were issued without any cancellation of the plaintiffs' titles in a manner that observed due process. This court is of the view that the plaintiffs have raised a triable issue and have thus demonstrated that they have a prima facie case.



10. As to whether the plaintiffs would suffer irreparable loss if the orders they seek are not granted, this court has taken note of their claim that they have been utilizing the suit land. They would be denied of such use if they were evicted. They have indicated that the defendants appear to be searching for buyers of the suit land. in this court's view there is a real risk that the land may be lost through disposal by the defendants and the plaintiffs may not be able to get it back, or get it back with ease due the second set of titles issued to the defendants. Consequently, this court is of the view that the plaintiffs may suffer irreparable loss in the event that the orders sought in the present application are not granted.
11. I am persuaded that the plaintiffs' application has met the threshold required for the grant of the interim injunction orders sought as set out in *Giella vs Cassman Brown* 1973 EA 358, and I therefore find that the application dated 29<sup>th</sup> September 23025 is merited and I therefore grant the same in term of prayer no 3 and 4 thereof. The costs of the application shall be in the cause.
12. The plaintiffs shall ensure that they comply with Order 11 of the Civil Procedure Rules and the matter shall be listed for pretrials on 16<sup>th</sup> June 2026 for pretrials.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 12<sup>TH</sup> MAY 2026.**

**MWANGI NJOROGE**

**JUDGE, ELC MALINDI.**

