Guyo v Maisha Bora Limited & 4 others (Environment and Land Case 149 of 2018) [2025] KEELC 5896 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5896 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ENVIRONMENT AND LAND CASE 149 OF 2018

EK MAKORI, J

JULY 23, 2025

BETWEEN

HAJILA BAJILA GUYO ..... PLAINTIFF

AND

MAISHA BORA LIMITED ..... 1ST DEFENDANT

WESTERN SUNSHINE CO., LTD ..... 2ND DEFENDANT

THE LAND REGISTRAR KILIFI COUNTY ..... 3RD DEFENDANT

THE ATTORNEY GENERAL ..... 4TH DEFENDANT

MICHAEL K. KATANA ..... 5TH DEFENDANT

RULING

1. The Applicant (1st Defendant) filed an application dated May 20, 2025, seeking a stay of proceedings pending the hearing and determination of an appeal at the Court of Appeal in Malindi, being Appeal Case No. COACA/E028 OF 2025, Maisha Bora Limited versus Hajila Bajila Guyo and four others. Grounds and a supporting affidavit from Mehboob H. Ahmed supported the application.
2. The Plaintiff strongly opposes the application, while the other parties did not participate.
3. The court directed that the application be canvassed through written submissions. Ms. Aoko, learned counsel for the 1st Defendant, and Mr. Sausi, learned counsel for the Plaintiffs, complied.
4. Springing from the materials and submissions by the participating parties, the main issue for this court to decide is whether to grant a stay of proceedings pending the outcome of the interlocutory appeal before the Court of Appeal and who should bear the costs of the current litigation.
5. The Applicant – 1st Defendant relied on the following grounds:

a. That the 1st Defendant has filed an appeal against the Ruling of this Court delivered on the 26th February 2025.

b. That the appeal raises valid legal issues for determination and has high chances of success.

c. That the appeal will be rendered nugatory if the orders sought are not granted.

d. That it is in the interest of justice that the orders sought are granted.

e. That the 1st Defendant has an arguable appeal with high chances of success.

f. That the 1st Defendant has a right to appeal and a right to a fair trial, and if orders sought are not granted, then the right to appeal by the 1st Defendant shall have been violated and infringed by this Court.

6. The Applicant relies on Order 42 Rule 6 of the Civil Procedure Rules and asserts that the Applicant must first satisfy the Court that the proper procedure to file an appeal has been followed and that the appeal has been properly filed. The appeal should be arguable and not frivolous.

7. The Applicant argues that the Court should not consider the merits of the appeal at this stage – see Ahmed Musa Ismael v Kumba Ole Ntamorua and 4 others [2014] eKLR – and that if a stay of proceedings is not granted, the appeal will become meaningless – see Stanley Kang'ethe Kinyanjui v Tony Ketter and 5 Others [2013] eKLR.

8. In the submissions by the Plaintiff, it is alleged that the 1st Defendant has developed a habit of filing numerous applications each time the matter is scheduled for a hearing. At one point, the court expressed frustration with how the 1st Defendant was handling this matter, which hindered the prompt resolution of the court's business and disregarded the rights of the other parties to an expeditious hearing.

9. The Plaintiff argues that this court can only stay its proceedings unless it is satisfied that substantial loss may result to the Applicant if the Orders are not granted, and that the application has been made without unreasonable delay.

10. The Plaintiff asserts that there is no risk of the 1st Defendant experiencing or suffering significant loss. In any event, the 1st Defendant is free to appeal this Court's decision through any process it chooses after the main case is heard and resolved if the 1st Defendant or any other party is unhappy with the outcome, including the Plaintiff. The delay in filing the Notice of Motion dated May 20, 2025, which was served on the Plaintiff two days before the hearing, has not been explained by the 1st Defendant. Additionally, the 1st Defendant has provided no reason for disregarding a Court Order issued on February 26, 2025. Therefore, the Notice of Motion dated May 20, 2025, is frivolous, scandalous, and ultimately seeks to delay the hearing of the Plaintiff's case. Furthermore, the 1st Defendant has failed to show any prejudice it would suffer if the application is denied.

11. The 1st Defendant filed a Notice of Preliminary Objection dated November 4, 2024, raising points of law as follows:

i. No consent was obtained before the institution of this suit and thus offending Section 30(1) as read with Section 2 of the *Land Adjudication Act* Cap 284 Laws of Kenya;

ii. Dispute Resolution Mechanism under Sections 26 to 30 of the *Land Adjudication Act* was by-passed;

iii. Doctrine of Exhaustion was offended;

iv. Section 13A of the *Government Proceedings Act* was by-passed;

v. *Limitation of Actions Act* 12-year rule was offended.

12. In its adherence to legal principles, the court acknowledged that a PO is only raised on pure points of law, as stated in the celebrated case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors [1969] EA 696. The court need not look elsewhere to determine the matter, but rather to the pleadings.

13. After a thorough discussion on each alleged point of law, the court ruled that:

> "The 1st defendant/applicant avers and submits that the suit properties Chembe/ Kibabamche 397 & 440 fall under an Adjudication area; therefore, the suit properties are subject to the provisions of the *Land Adjudication Act* Cap 284 Laws of Kenya. The provisions of Section 30(a) of the *Land Adjudication Act* are couched in mandatory terms that the consent should be filed at the time of the institution of the suit, and that failure to file such consent is fatal to the suit. The plaintiff has not demonstrated that she obtained consent before filing this suit. The plaintiff also failed to file consent from the Adjudication Officer at the time of the institution of this suit.
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> In rebuttal, the plaintiff/respondent contends that the time and minute, the Settlement Fund Trustee received the money from the plaintiff and prepared, executed the instrument of transfer and registered the same instrument, their ownership interest of the two (2) properties ceased to existed by virtue of the two (2) properly executed instrument of transfer. That upon the plaintiff paying stamp duty to the Government and the two (2) instruments of transfers were properly stamped, the effect is that the interest on the two (2) plots shifted immediately to the plaintiff as the legal owner separate from the Settlement Fund Trustee Scheme. This ownership is constitutional.
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> The plaintiff further asserts that it ought to have been realized that once a discharge of charge has been prepared and registered, followed by a transfer instrument, it is trite that the interest of plots numbers 397 and 440 shifted from the Settlement Fund Trustee Scheme to the plaintiff as the legally new owner capable of suing and being sued without necessarily involving the former owners, i.e., the Adjudication Officer. The land adjudication process involves the following: after verification of documents by the adjudicating officers, the director of the settlement will issue a discharge of charge and transfer of land documents, which transfers the land from the Settlement Fund Trustee to the owner. So, the authority or consent to sue as a requirement is extinguished.
>
> I agree with the plaintiff that what the plaint and the pleadings disclose is past the adjudication stage. The claim herein is based on alleged fraudulent activities over the suit properties post-adjudication. The provision and authorities cited by the 1st defendant regarding the adjudicative mechanism under the *Land Adjudication Act* and the exhaustion doctrine are not applicable in this matter.
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> On the issue of Section 13A of the *Government Proceedings Act*, the 1st defendant argues that the Notice of Motion Application dated 22nd May 2023 and the proposed amendments to include the 8th and 9th defendants offend express provisions of Section 13A of the *Government Proceedings Act* Cap 40 Laws of Kenya as no Notice of Intention was issued by the plaintiff to the Attorney General. The proposed 8th and 9th defendants are government officers. The plaintiff's application and proposed amended plaint do not demonstrate that

the plaintiff indeed sent out notices as envisioned in Section 13A of the *Government Proceedings Act*.

On this point, neither the 8th nor the 9th defendant has been aggrieved – that there was no service of notice to sue. Based on that argument, I do not think it will be grounds to dismiss a claim by the plaintiff at a preliminary stage.

On the Limitation of Actions front, the 1st defendant states that the entire suit and the proposed amendments in the plaint to include the 6th and 7th defendants are barred by the *Limitation of Actions Act* Section 7, as read with Section 17.

The 1st defendant contends that the plaintiff states on the plaint dated 13th July 2018 and on the face of her application dated 22nd May 2023 that she was allegedly allotted the suit properties Chembe/Kibabamche 397 and 440 in 1998. Evidence in the form of transfers filed in the 1st defendant's List of Documents dated 26th April 2023, the 6th proposed Defendant transferred the suit property in 2002, and the 7th proposed Defendant transferred the suit in 2006.

The 1st defendant concludes that the plaintiff is legally barred from instituting a suit more than 12 years after allegedly acquiring an interest in the suit properties. Further, the plaintiff is also barred by law from filing suit against the proposed 6th and 7th defendants who acquired the suit properties and sold them in 2002 and 2006.

That the plaintiff is, therefore, time-barred in bringing a suit against the 1st, 2nd, 3rd, 4th, and 5th defendants and the 6th and 7th proposed defendants as more than 12 years have elapsed since the plaintiff allegedly acquired an interest in the suit properties. Therefore, the entire suit should be dismissed or struck out for being time-barred by law.

In a rejoinder, the plaintiff states that Sections 7 and 17 of the Act are quoted as offended. The said sections are evident in their contents that any person should not bring an action to recover the land after the end of twelve (12) years from the date on which the action accrued. It's the plaintiff's submission that the 1st defendant has misunderstood the section as mentioned earlier since the plaintiff is not in court to recover her plots but is in court demanding that the title of the 2nd defendant, which was obtained fraudulently, be cancelled. The plaintiff argues that this is not a case of land recovery but a case of rectifying a fraudulent transaction, which is not time-barred.

The plaintiff further contends that she possesses the two properties. She obtained several orders against the defendants from this court and is in actual possession and occupation. Therefore, as indicated, her action is not to recover, but she is seeking orders to cancel the title in the names of the 1st and 2nd defendants.

From the pleadings by the parties, there seems to have been several actions involving the suit properties, including the cancellation of the title held by the 1st defendant by the NLC, which the court quashed and proposed that 1st defendant must be heard first; the interested parties also claim a stake on the suit property, time for purposes of recovery of land cannot be deciphered from the pleadings as amongst the parties. It is an issue to be reckoned with at the trial.

The upshot is that the preliminary objection is dismissed with costs.

Given how this matter has been handled with a deluge of applications, this court will no longer entertain other applications after this ruling. Parties must comply with Order 11 of

the Civil Procedure Rules within 30 days hereof, and this court provides a date for a hearing on merit."

14. Having addressed myself as I did above, I expected the 1st Defendant/Applicant to appeal my decision to the Court of Appeal, for any stay orders from the Superior Court, if any, as I cannot revise my stance by stopping the current proceedings. The Applicant has not shown the steps taken so far to pursue the appeal, only claiming that an appeal has been filed through the proper channels.

15. In my opinion, hearing the current case on its merits will fully and definitively resolve the issues raised. I see no prejudice or substantial loss to be suffered by the Applicant if the matter is heard on its merits. The only mistake I was informed of, which I find insignificant and stemming from the contested ruling, is the typo regarding the date of the PO. I cited it as Objection dated June 9, 2023, when it should have been PO dated November 4, 2024—likely due to the numerous applications filed in this matter so far.

16. Seeing the current application was filed two days before the main hearing, the 1st Defendant, by filing yet another application and ignoring the explicit case management orders issued on February 25, 2025, demonstrates bad faith. Notice of Motion dated May 20, 2025, is hereby dismissed with costs to the Plaintiff.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 23RD DAY OF JULY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Sausi, for the Plaintiff

Ms. Aoko, for the 1st Defendants

Ms. Otieno, for the 5th Defendant

Happy: Court Assistant