



REPUBLIC OF KENYA



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**Nyamawi & 30 others v Kenya Airports Authority (Environment & Land  
Case E027 of 2022) [2024] KEELC 131 (KLR) (25 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 131 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E027 OF 2022**

**NA MATHEKA, J  
JANUARY 25, 2024**

**BETWEEN**

**WILSON RHUMBA NYAMAWI ..... 1<sup>ST</sup> PLAINTIFF**  
**NYAMAWI RUMBA NYAMAWI ..... 2<sup>ND</sup> PLAINTIFF**  
**RUMBA NYAMAWI RUMBA ..... 3<sup>RD</sup> PLAINTIFF**  
**DZALA MALAU KOMBO ..... 4<sup>TH</sup> PLAINTIFF**  
**RICHARD KARISA KATANA ..... 5<sup>TH</sup> PLAINTIFF**  
**MUNYAZI MOTI KARENGE ..... 6<sup>TH</sup> PLAINTIFF**  
**JUMA KATAMBO ..... 7<sup>TH</sup> PLAINTIFF**  
**LINA REHEMA NDORO ..... 8<sup>TH</sup> PLAINTIFF**  
**MBUI RHUMBA NYAMAWI ..... 9<sup>TH</sup> PLAINTIFF**  
**KOMBO MKAZI KAKONO ..... 10<sup>TH</sup> PLAINTIFF**  
**CHANGAWA KATANA ..... 11<sup>TH</sup> PLAINTIFF**  
**HARRISON CHUPHI ..... 12<sup>TH</sup> PLAINTIFF**  
**UMAZI JOTO TSUMA ..... 13<sup>TH</sup> PLAINTIFF**  
**MATANO MADEM MANGALE ..... 14<sup>TH</sup> PLAINTIFF**  
**MEJUMAA DZINE CHIGAMBA ..... 15<sup>TH</sup> PLAINTIFF**  
**AMINA NYAMAWI MUMBA ..... 16<sup>TH</sup> PLAINTIFF**  
**MWANAMISI NGINGO ..... 17<sup>TH</sup> PLAINTIFF**  
**MARGARET BARABARA ..... 18<sup>TH</sup> PLAINTIFF**  
**JULIANA KAMENE MWANIA ..... 19<sup>TH</sup> PLAINTIFF**



<b>GONZI IDD TSIMBA .....</b>	<b>20<sup>TH</sup> PLAINTIFF</b>
<b>ZUMA NYAMAWI MUMBA .....</b>	<b>21<sup>ST</sup> PLAINTIFF</b>
<b>MAZERA NYAMAWI .....</b>	<b>22<sup>ND</sup> PLAINTIFF</b>
<b>MALI CHARO JEFA .....</b>	<b>23<sup>RD</sup> PLAINTIFF</b>
<b>KENNEDY NYAMAWI RUMBA .....</b>	<b>24<sup>TH</sup> PLAINTIFF</b>
<b>KISITSA MAKANGA .....</b>	<b>25<sup>TH</sup> PLAINTIFF</b>
<b>MWALIM MASHA SIRIA .....</b>	<b>26<sup>TH</sup> PLAINTIFF</b>
<b>KIBAO MKUZI KAKONO .....</b>	<b>27<sup>TH</sup> PLAINTIFF</b>
<b>MBEYU TSUMA MWANGOMA .....</b>	<b>28<sup>TH</sup> PLAINTIFF</b>
<b>CHOMBO MWAZIGE KASUKA .....</b>	<b>29<sup>TH</sup> PLAINTIFF</b>
<b>KAFWANI DIMA SHEHE .....</b>	<b>30<sup>TH</sup> PLAINTIFF</b>
<b>OMARI MANDARA CHINENE .....</b>	<b>31<sup>ST</sup> PLAINTIFF</b>

**AND**

**THE KENYA AIRPORTS AUTHORITY ..... DEFENDANT**

### **JUDGMENT**

1. The plaintiffs aver that they have occupied, lived and farmed for more than 30 years on the land bordering the Moi International Airport. That on the 21<sup>st</sup> February 2020 under heavy police guard, heavy machinery and under the direction and orders of the Defendant, the defendant and its agents descended on the plaintiffs crops and homes and completely destroyed all the plaintiffs' homes and farms. The plaintiffs' sources of livelihood, on which they had depended, and the only homes they ever knew, were destroyed in minutes. The plaintiffs aver and maintain that no notice of any impending eviction was ever given to the plaintiffs nor was any public participation of any kind ever conducted. The plaintiffs have been rendered destitute, homeless and in a hopeless situation and the plaintiffs have suffered loss and damage. The plaintiffs aver and maintain that their eviction from their ancestral land by the defendant was unlawful and illegal, and the plaintiffs claim damages. The the plaintiffs pray for judgement against the defendant for;
  - a. Damages for wrongful evection.
  - b. A permanent injunction to restrain the defendant, itself, its servants and or agents from evicting or further demolishing their homes, harassing and or interfering with the plaintiffs' occupation of their ancestral land.
  - c. An Order compelling the defendant to reinstate and resettle the plaintiffs on their ancestral land.
  - d. Costs of and incidental to this suit.
  
2. The defendant avers that the plaintiffs have not been in occupation and/or possession of any land that borders Moi International Airport. The Defendant without prejudice to the above further avers that the land the plaintiffs have allegedly been occupying living and farming on is not even described/



disclosed in the plaint further cementing the fact that the plaintiffs have not been in occupation and/or possession of any land that borders Moi International Airport. The defendant avers that there was no need for any eviction notice or public participation as alleged as the plaintiffs as stated earlier did and do not occupying any land bordering Moi International Airport that would call for such actions to be undertaken by the defendant. The defendant avers that it did not evict anyone from their land, ancestral or otherwise and as such did not render anyone homeless or destitute and the allegations of loss and damage.

3. The defendant avers that the plaintiffs besides not describing the land that it is alleged the defendant invaded have also not demonstrated to this court the allegations of their occupation, possession and eviction and damage to the crops and homes and as such this suit lacks merit, it frivolous and vexatious and should be dismissed at the earliest opportune moment. The defendant further avers that the plaintiffs have not fulfilled the ingredients required for grant of injunctive orders.
4. This court has considered the evidence and submissions therein. With regard to the grant of a mandatory injunction, the test is correctly set out in Vol. 24 *Halsbury's Laws of England* 4<sup>th</sup> Edition, Paragraph 98, thus:

" A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff... a mandatory injunction will be granted on an interlocutory application". Also in *Locabail International Finance Ltd -v- Agroexport and Others* [1986] 1 All ER 901, at page 901, it was stated:

" A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction".

5. Clearly, the plaintiffs in this case want inter alia a mandatory interlocutory injunction and in order to succeed, one needs to demonstrate special circumstances and an exceptionally strong case. In the case of *Kamau Mucuba v Ripples Limited* (1993) eKLR, Hancox CJ, stated as follows on the issue of grant of mandatory injunctions at an interlocutory stage;

" Speaking for myself, I entirely agree that, historically, the principles laid down with regard to temporary mandatory injunctions are that they will only be granted exceptionally and in the clearest cases. In *Canadian Pacific Railway v Gaud* [1949] 2KB, Cohn LJ said at page 249:

" I entirely agree..... that the granting of a mandatory injunction on interlocutory relief is a very exceptional form of relief to grant, but it can be granted."



6. In the case of *Shepherd Homes v Sandham* (1970) 3 WLR 348) the court held that;

" ..... if a mandatory injunction is granted on motion, there will normally be no question of granting a further mandatory injunction at the trial; what is done is done and the plaintiff has, on motion, obtained once and for all the demolition or destruction that he seeks. Where an injunction is prohibitory, however, there will often still be a question at the trial whether the injunction should be dissolved or contained."

7. I am alive to the above principles in granting a mandatory injunction. The plaintiffs produced two witnesses. The 31<sup>st</sup> plaintiff, PW1 who testified that he has lived on the suit property since 1980 and had cultivated crops before they were all demolished on 10/2/2020 without notice. He narrated the series of events of how they went to an Organization named Haki Yetu who tried to assist in seeking compensation for the damages they incurred but were unable. PW2, the 1<sup>st</sup> plaintiff testified that at the material date, the defendants trespassed onto their property and demolished their structures. He explained that there was a wall between the suit property and the airport which was the boundary. He also claimed that it was ancestral land. The defendant called one witness Peter Wafula DW1 who vehemently denied that the defendant trespassed onto the suit property. He alleged that the defendant was conducting stabilization of soil within their boundaries and that the allegation of destruction of homes and crops are false hoods.

8. The plaintiffs' witnesses admitted that they do not have title to the suit property. The photographs PExh 3 produced by PW2 are undated and it is not possible to tell from the photographs when the demolitions happened. There is no description and /or title deed of the suit property which was produced in court. There is no surveyors report produced either this court cannot determine the location nor the ownership of the suit land. It is therefore impossible to determine whether or not there was any illegal eviction if at all. I find that the plaintiffs have failed to establish their case on a balance of probabilities and I dismiss it with costs.

9. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25<sup>TH</sup> DAY OF JANUARY 2024.**

**N.A. MATHEKA**

**JUDGE**

