



**Mchoki & 41 others v Muiruri (Environmental and Land Originating
Summons 8 of 2023) [2024] KEELC 4278 (KLR) (20 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4278 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 8 OF 2023
FM NJOROGE, J
MAY 20, 2024**

BETWEEN

SAFARI CHARO MCHOKI & 41 OTHERS PLAINTIFF

AND

BEN GITONGA MUIRURI DEFENDANT

RULING

1. There are two applications pending determination. The first is dated 29th November 2023 and the second 15th December 2023, both filed by the Plaintiffs. In the first application, the orders sought were:
 - a. Spent.
 - b. Spent.
 - c. That this honourable court be pleased to issue an injunction restraining the defendants whether by themselves, their agents, employees and or any one acting under their authority or instance from selling, disposing off, transferring, evicting the plaintiffs or otherwise dealing with Plot No. Kilifi/Mtwapa Settlement Scheme/3400 to 3500 pending the hearing and determination of this suit.
 - d. That costs of this application be provided for.
2. On 4th December 2023, this court issued interim orders that the status quo be maintained. Subsequently, the Plaintiffs brought the second application seeking an order for arrest and committal to civil jail for a period not exceeding 6 months or fine and/or both against the Defendant, OCS Ndongya Police Station and OCS Mtwapa Police Station Joachim Kangangi for breaching and disobeying the orders issued on 4th December 2023.



3. Both applications were supported by affidavits sworn by Safari Charo Mchoki on 29th November 2023 and 15th December 2023 respectively.
4. In support of the first application for injunction, the deponent stated that the Plaintiffs have been quietly occupying without any interruption the Plot No. Kilifi/Mtwapa Settlement Scheme/3400 to 3500 (hereinafter “the suit property”) since the 1970s by virtue of it being their ancestral land; that on 19th August 2023, they were summoned by the local administration to vacate the suit property for reasons that the Defendant was in possession of the title to the same. The deponent added that the defendant was in the process of subdividing and disposing the same yet the Plaintiffs have been occupation for over 50 years.
5. In support of the second application, the said Safari Charo deposed that despite service of the first application and the orders dated 4th December 2023 upon the Defendant on 9th and 11th December 2023, the defendant through the OCS Ndonya Police Station and Mtwapa Police Station, moved to the suit property on 12th December 2023 and demolished the Plaintiffs’ houses, and has since brought to the suit property building materials with a view of erecting a perimeter wall therein. The deponent added that the defendant has continued to use threats and intimidation to frustrate the Plaintiffs from accessing the suit property.
6. In response, the Defendant filed two replying affidavits which he both swore on 5th February 2024. In relation to the first application, the Defendant stated that he is the registered owner of land known as Kilifi/Mtwapa/3431-3530 and that he is a stranger to the suit property herein. He explained that the original property that resulted to Kilifi/Mtwapa/3431-3530 was known as Kilifi/Mtwapa/749 which formed part of the estate of one Andrew Ngecu Kinya. Upon succession proceedings, the heirs transferred Kilifi/Mtwapa/749 to a company identified as Jawa Logistics Limited vide instrument of transfer dated 3rd May 2011. He then purchased the same from the said company through bank financing. Consequently, Kilifi/Mtwapa/749 was subdivided into plots Kilifi/Mtwapa/3431-3530.
7. The Defendant added that the Plaintiffs have never occupied Kilifi/Mtwapa/3431-3530 and that the plots have been vacant. He added that the beacons were placed on Kilifi/Mtwapa/3433-3530 back in the year 2011 during the subdivision process.
8. In response to the second application, the defendant deposed that he was never served with any court orders as stated by the Plaintiffs. He denied violating any court orders or using threats and intimidation against the Plaintiffs.
9. On 6th February 2024, when the applications came up for directions, I directed the Plaintiffs to file written submissions within 14 days from that date and the Defendant within 7 days. As at the time of writing this opinion, no written submissions had been filed by either party. In the given circumstances, the two applications are hereby dismissed for want of compliance with this court’s directions.

Dated, signed and delivered at Malindi via electronic mail on this 20th day of May 2024.

A photograph of a handwritten signature in blue ink on a light-colored surface. The signature is cursive and appears to read 'Safari Charo Mchoki'.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

MLD ELCLOS08/23-JDGT/DF-04.12.23/FH-16.01.24/LH-18.03.24/DR 20.05.24F Page 2 of 2

