



**Mwangazi & 4 others v Mawani & 83 others (Environmental and Land Originating Summons 463 of 2010 & Environment & Land Case 60 of 2011 (Consolidated)) [2025] KEELC 633 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 633 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**

**ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 463 OF 2010  
& ENVIRONMENT & LAND CASE 60 OF 2011 (CONSOLIDATED)**

**SM KIBUNJA, J**

**FEBRUARY 19, 2025**

**BETWEEN**

**JUMA CHARO MWANGAZI & 3 OTHERS & 3 OTHERS & 3 OTHERS ..... PLAINTIFF**

**AND**

**JAFERALLI LALJI MAWANI ..... 1<sup>ST</sup> DEFENDANT  
MSAMBWENI DEVELOPMENT CO. LTD ..... 2<sup>ND</sup> DEFENDANT**

**AS CONSOLIDATED WITH**

**ENVIRONMENT & LAND CASE 60 OF 2011**

**BETWEEN**

**MSAMBWENI DEVELOPMENT CO. LTD ..... PLAINTIFF**

**AND**

**SAID JUMA FUNDI & 81 OTHERS & 81 OTHERS & 81 OTHERS ..... DEFENDANT**

**RULING**

1. The 2<sup>nd</sup> defendant/applicant has moved the court through the application dated 18<sup>th</sup> November 2024 seeking for inter alia, the following orders:
  - a. Mandatory injunction restraining the defendants/respondents or any other party acting party acting on their behalf from entering, invading, constructing or building upon, farming or in



any other way dealing with L. R. 5022/26 [Original Number CR 9477] together with the plaintiff's two other adjoining properties namely, L. R. 4782/3 and 5014/1, suit properties, pending the hearing and determination of this suit as consolidated.

- b. That the OCS Msambweni/OCPD Msambweni, DCIO Kwale, County Police Commander Kwale, be authorised to supervise and enforce the orders issued safeguarding the suit properties from invasion, trespass and wastage pending further orders of the court.

The application is based on the twelve (12) grounds on its face and supported by the affidavit of Colonel (RTD) Joseph Nyaga Nguru, director and Secretary to the 2<sup>nd</sup> defendant, sworn on the 18<sup>th</sup> November 2024, whose contents I have considered. No replying documents were filed in response to this application.

2. In the application dated 9<sup>th</sup> December 2024, the 2<sup>nd</sup> defendant/applicant seeks for inter alia:
  - a. The court be pleased to endorse the consent received by the registry on 6<sup>th</sup> October 2020, through the letter dated 28<sup>th</sup> August 2020, inter alia setting aside the dismissal of the suits and reinstating them.
  - b. That upon endorsing the said consent the court be pleased to settle the application dated the 18<sup>th</sup> November 2024 by endorsing the consent filed dated 5<sup>th</sup> December 2024.

The application is premised on the thirteen (13) grounds on its face and supported by the affidavits of Colonel (RTD) Joseph Nyaga Nguru, director and Secretary to the 2<sup>nd</sup> defendant, sworn on the 9<sup>th</sup> December 2024, 28<sup>th</sup> January 2025 and 12<sup>th</sup> February 2025, whose contents I have also considered.

3. The plaintiffs' responded to the application dated 9<sup>th</sup> December 2024, through the affidavit of Mzee Chula Kadzole, the 2<sup>nd</sup> plaintiff, inter alia confirming the 2<sup>nd</sup> defendant's depositions on the settlement of the suits and adding that they are not involved in ongoing invasions onto the suit properties.
4. The issues for the court's determinations on the two notices of motion are as follows;
  - a. Whether the consent to set aside the dismissal order and reinstate the suits should be adopted as an order of the court.
  - b. Whether the consent settling the suits should be adopted as an order of the court.
  - c. Who should pay the costs.
5. The court has considered the grounds on the two applications, affidavit evidence, submissions by the learned counsel made on 5<sup>th</sup> December 2024, and February 11, 2025, the record and come to the following findings:

- a. That the parties have through their respective counsel filed the consent letter dated the 28<sup>th</sup> August 2020, inter alia seeking to have the dismissal order set aside and the suit reinstated; that the suit be marked settled with each party bearing their own costs in accordance with the Deed of Settlement dated 8<sup>th</sup> July 2020; that 306 acres surrendered by Msambweni Development Company Limited to the Government of Kenya be equitably distributed and or allocated to the 413 beneficiaries as per the list of beneficiaries; that each party be at liberty to apply should the other party fail to comply with their obligations reserved in the Deed of Settlement.
- b. That by consent dated the 5<sup>th</sup> December 2024, the parties through their learned counsel agreed inter alia that an order of mandatory injunction be issued restraining the respondents, Juma Charo Mwangazi & others, or any other party acting for them from entering, invading, constructing, building, farming or in any other way dealing with L. R. 5022/26 [Original



Number CR 9477] together with the plaintiff's other adjoining properties namely L. R. 4782/3 and 5014/1, the suit properties; that injunction do issue preserving the status quo of the suit properties as obtaining in November 2019 by restraining the respondents, Juma Charo Mwangazi & others, or any other party acting on their behalf from entering, invading, constructing, building, farming or in any other way dealing with the suit properties pending further orders of the court; that the OCS Msambweni/OCPD Msambweni, DCIO Kwale, County Police Commander Kwale, be authorised to supervise and enforce the orders issued safeguarding the suit properties from invasion, trespass and wastage pending further orders of the court; that there be no orders as to costs.

- c. That the proceedings of 11<sup>th</sup> November 2013 in ELC NO. 60 of 2011 confirms that suit and ELC NO. 463 of 2010 were consolidated by consent. It was also agreed that ELC NO. 463 of 2010 shall be the lead file. The court has also confirmed that the consolidated suits were dismissed on 23<sup>rd</sup> February 2017 for want of prosecution upon application by counsel for the defendant, and the counterclaim was also marked withdrawn. That in view of the foregoing I find the consent number 1, on the letter of consent dated 28<sup>th</sup> August 2020, to be in order and the same is adopted as an order of the court. The dismissal order of 23<sup>rd</sup> February 2017 as extracted and issued on the 6<sup>th</sup> March 2017, is hereby set aside and the consolidated suits reinstated.
- d. From the plaint dated 21st March 2011 and filed in ELC No. 60 of 2011, the subject matter of the suit is given at paragraphs 4 and prayer (a) thereof as Title Number CR 9477 [LR NO. 5022/19 [Original NO. 5014/2], Kwale. The statement of defence dated 21st December 2011 at paragraph 2 referred to the same suit property. The originating summons dated 20<sup>th</sup> December 2010 filed in ELC NO. 463 clearly shows the subject matter of the suit was Title No. C.R. 9477, L.R. NO. 5022 [Original No. 5014/2], Mainland South. I therefore take it that the subject matter in both suits was the same and that is one of the reasons that informed the consolidation order.
- e. Remembering that parties are bound by their pleadings, and noting from the finding in (d) above, that the parcels described in the application dated 18<sup>th</sup> November 2024 as “the plaintiff's two other adjoining properties namely L. R. 4782/3 and 5014/1” are not subject matters in either of the two consolidated suits, the said parcels cannot therefore be a subject matter of a consent meant to settle the pending suits. The attempt by counsel to sneak in the two properties while knowing very well they were not subject matters in the suits is to say the least unexpected of an officer of the court, unprofessional and irregular. That as the court has the inherent powers to make orders necessary for the ends of justice or to prevent abuse of the process of the court under section 3A of the *Civil Procedure Act* chapter 21 of the Laws of Kenya, the court orders any reference to the two properties in the two applications and consent number 1 dated 5<sup>th</sup> December 2024 herein be hereby struck out. That will enable the court proceed to pronounce itself on the other consent orders relating to the subject matter of the suits before the court.
- f. That the consents numbers 2, 3, and 4 in the letter dated 28<sup>th</sup> August 2020 settling the consolidated suits in terms of the Deed of Settlement dated 8<sup>th</sup> July 2020 are adopted as an order of the court. That consequent to the suit being marked as settled in terms of the consent dated 28<sup>th</sup> August 2020, the consent numbers 2 and 3 in the letter of consent dated 5<sup>th</sup> December 2024, to the effect that it was to remain in force “till further orders” of the court may not be issued as there are no pending proceedings after the settlement of the suits.



6. That in view of the foregoing determinations on the two applications and consents, the court finds and orders as follows:
- a. That the notice of motion dated the 9<sup>th</sup> December 2024 is allowed in the following terms:
    - i. That prayer 2 is granted and consent number 1 in the letter of consent dated 28<sup>th</sup> August 2020 adopted as an order of the court. Accordingly, the order dismissing the suits is set aside and the suits reinstated as prayed.
    - ii. That prayer 3 is granted settling the notice of motion dated 18<sup>th</sup> November 2024 in terms of the consent numbers 1 and 4 of the letter of consent dated 5<sup>th</sup> December 2024, only in respect to only Title Number CR 9477 [LR NO. 5022/19 [Original NO. 5014/2], Kwale. It should be noted that reference to “the plaintiff’s two other adjoining properties namely L. R. 4782/3 and 5014/1” has been ordered to be struck out in (e) above.
  - b. That the court also adopts consents orders 2, 3, and 4 of the consent letter dated August 28, 2020, as orders of the court, thereby settling the consolidated suits in terms agreed in the Deed of Settlement dated the 8<sup>th</sup> July 2020 attached to the said consent.
  - c. That each party to bear their own costs.
  - d. The files for the two consolidated suits be closed.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 19<sup>TH</sup> DAY OF FEBRUARY 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In The Presence Of:

Plaintiffs : Mr Ngombo

Defendants : Mr Akanga For 2<sup>Nd</sup> Defendant

Court Assistant –Shitemi.

