



**Gio Fo Investments Limited v Mwanduka & 3 others (Environment & Land Case E059 of 2006) [2024] KEELC 13502 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13502 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E059 OF 2006  
FM NJOROGE, J  
NOVEMBER 27, 2024**

**BETWEEN**

**GIO FO INVESTMENTS LIMITED ..... PLAINTIFF**

**AND**

**MARTIN CHARO MWANDUKA ..... 1<sup>ST</sup> DEFENDANT**

**KARISA MASHA ..... 2<sup>ND</sup> DEFENDANT**

**GEORGE MASHA ..... 3<sup>RD</sup> DEFENDANT**

**KAHINDI MASHA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a ruling in lieu of a judgment, arising from certain procedural missteps that were noted in the court record, and they are not of little consequence.
2. The plaintiff filed the present suit on 6/7/2006 vide a plaint of even date which was subsequently amended on 24/7/2006. In a further amended plaint dated 18<sup>th</sup> September 2006 the following reliefs are sought:
  1. A permanent order of injunction restraining each of the defendants by themselves and/or with or through their nominees, agents and /or any other persons whomever from entering into and/or remaining upon title no Chembe/Kibabamshe /405 or in any manner howsoever from interfering with any of the activities being undertaken by the plaintiff/applicant on or upon title no Chembe/ Kibabamshe /405;
  2. Damages for trespass and also for loss suffered in respect of damage and destruction of the plaintiff's equipment and materials and for delays and inconveniences caused to construction activities being undertaken by the plaintiff;



3. Costs of this suit and interest thereon at court rates.
3. The defendants filed their defence dated 1/8/2006. In their defence they denied the plaintiff's claim wholly/and averred that they have been living on the suit land since time immemorial as the same has been their ancestral land. they further stated that their father was allocated the suit land during adjudication and all along they have been awaiting issuance of title therefor. The question the plaintiff's title for having been issued in 2006 while a government embargo on all dealings with the suit land in the area was still in place.
4. The plaintiff's suit was dismissed with costs for non-attendance on the hearing day 15/2/24 and the defendants' 4 witnesses gave evidence ostensibly in the counterclaim.
5. It so happened that upon perusing the court file while preparing this judgment this court noted that though an application dated 23/07/2013 for amendment of defence to incorporate a counterclaim was filed on 24/7/2013, the same has never been prosecuted. On the basis of the above it is clear that there is no counterclaim on the record although there was intended to be one.
6. When the counsel for the defendants stated in court that there is a counterclaim, she must be assumed to have been referring to the document titled "amended written statement of defence" which incorporates a "counterclaim" and which is attached to the notice of motion dated 23/07/2024. By virtue of that error the evidence of the defendants was taken while the amendment had not been effected to include the counterclaim. This is clearly a bona fide mistake. The document relied on as a counterclaim begins from the middle of the bundle titled amended written statement of defence. Some of its contents are colour coded red to denote the intended amendments. It is not a wonder then that both the defendants' counsel and the court erroneously relied on that document.
7. Further, one of the applications dated 23/7/13 was prosecuted and granted on 22/8/13 with the effect that three other parties were joined as third parties in the present case. This also escaped notice of the present counsel for the defendants who appeared unaware if those parties had been served with the third party notice of the hearing notice.
8. On account of those three errors in these proceedings, this court is unable to prepare a judgment in the present case unless they are first corrected. Judgment is hereby formally deferred until the application dated 23/07/2024 is heard and determined. This matter shall hence be mentioned on 17/12/2024 for directions on the issuance of third party notices and the hearing of the amendment motion dated 23/7/2013.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

