



Bamiftah & another v Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development & 7 others; Shisanya & 2 others (Applicant) (Environment & Land Case E004 of 2023) [2024] KEELC 7463 (KLR) (13 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7463 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E004 OF 2023
SM KIBUNJA, J
NOVEMBER 13, 2024**

BETWEEN

FARID FARAJ AWADH BAMIFTAH 1ST PLAINTIFF

AL MAHRA INDUSTRIES LIMITED 2ND PLAINTIFF

AND

**THE CABINET SECRETARY, MINISTRY OF LANDS, PUBLIC WORKS,
HOUSING AND URBAN DEVELOPMENT & 7 OTHERS & 7 OTHERS & 7
OTHERS DEFENDANT**

AND

CORNEL L SHISANYA APPLICANT

MTWAPA MAWENI SETTLEMENT SCHEME APPLICANT

MTWAPA MAWENI COMMUNITY BASED ORGANIZATION APPLICANT

RULING

Notice of Motion dated 23rd April 2024

1. Vide the notice of motion dated 23rd April 2024, Cornel L. Shisanya, Mtwapa Maweni Settlement Scheme and Mtwapa Maweni Community Based Organization, herein after referred to as the 1st to 3rd applicants respectively, seeks for the following:
 - a. To be joined in the suit as they are beneficiaries in L.R.No. 334 and 324/111/MN, Mtwapa Creek.
 - b. Temporary injunction to be issued, restraining the plaintiffs from further interfering with their occupation of the various parcels subdivided from the said properties.



- c. The OCS Mtwapa Police Station to ensure compliance of the above order.
- d. Costs be in the cause.

The application is based on the ten (10) grounds on its face, inter alia that they have lawful titles over their parcels; that the County Government of Kilifi has a stake over the suit properties; that there exists several other suits including case Nos. 60 of 2020, 48 of 2019, 560 of 2004 and petition No. E012 of 2023, that have not been disclosed. The application is supported by the affidavit of Cornel L. Shisanya, 1st applicant, sworn on the 23rd April 2024, in which he among others deposed that he is a member of the 2nd and 3rd applicants and that they are beneficiaries of the lands in dispute with genuine titles issued to them by the Government from September 2022; that the plaintiffs' titles are fake, and should be recalled and cancelled.

2. Farid Faraj Awadh Bamiftah, the 1st plaintiff, opposed the application through the replying affidavit sworn on the 29th May 2024, inter alia deposing that plot No. Subdivision No. 4730 (original No. 527/2) Section 111 Mainland North, Mtwapa Kilifi, CR. No. 38340 is registered in their name, and the applicants have not established their stake on the suit property to be joined in the suit, or met the threshold for injunctive order to issue.
3. The court issued directions on filing and exchanging submissions on the 6th June 2024. The 1st applicant and the learned counsel for the plaintiffs filed their submissions dated 3rd June 2024 and 29th June 2024 respectively, which the court has considered.
4. The following are the issues for the determinations by the court:
 - a. Whether the applicants have met the threshold for joinder in the suit as interested parties.
 - b. Whether the applicants have met the threshold for the injunctive order sought to be issued.
 - c. Who pays the costs?
5. The court has carefully considered the grounds on the application, affidavit evidence, submissions by the 1st applicant and counsel for the plaintiffs, superior courts decisions cited thereon, and come to the following findings:
 - a. This suit was commenced through the plaint dated the 5th March 2024. The 1st plaintiff's claim is for among others, ownership of plot No. Subdivision No. 4730 (original No. 527/2) Section 111 Mainland North, Mtwapa Kilifi, CR. No. 38340, while the 2nd plaintiff's claim is over L.R. Nos. MN/111/5517 to 5524. The applicants have based their application for joinder to the suit as interested parties on the allegations that they are beneficiaries and title holders of parcels created out of the suit properties by the Government of Kenya.
 - b. As submitted by the counsel for the plaintiffs, the issues to be considered, by the courts in joinder applications by interested parties have been settled through the various superior courts decisions. In the case of Francis K. Muruatetu & Another versus Republic & 5 Others [2016] eKLR, the Supreme Court of Kenya set out the elements to include:
 - “ a. The personal interest or stake that the party has in the matter must be set out in the application. the interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.



- b. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
 - c. Lastly, a party must, in its application, set out the case and/or submission it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.”
- c. The applicants’ claim has been disputed by the plaintiffs, and it is upon the applicants to convince the court that they indeed have an legal interest or claim in the suit, as required of them under sections 107 to 109 of the *Evidence Act* chapter 80 of Laws of Kenya. I notice that other than the applicants claiming to be beneficiaries of lands created by the Government from the suit properties, and that they hold genuine titles, there was no documentary evidence in the form of for example, copies of titles, certificates of official searches, allotment letters, that were annexed to the supporting affidavit sworn by 1st applicant. It is therefore doubtful whether they are necessary parties what their stake is in the suit.
- d. All the eight defendants are all government agencies, including the District Land Adjudication and Settlement, Chief Land Registrar, Director of Surveys and National Land Commission, who routinely deal with land allocation and administration in settlement schemes, among others and the non- joinder of the applicants as interested parties will not prejudice any accrued interest they may individually or as a group have over the suit properties, as the defendants are capable of defending their interests.
- e. The court has also noted that the 1st applicant has not annexed any written authority from the 2nd and 3rd applicants to execute pleadings, swear affidavits and file suits/applications in court on their behalf. I have seen loose copies of a letter of authority dated 4th June 2024 and 4th April 2024. The month in the copy dated 4th April 2024 is clearly seen to have been JUNE but APRIL was later over-written on top of it. Documentary evidence is presented to the courts in applications like the instant one by the applicants as attachments to affidavits and not through written submissions. The 1st applicant has therefore failed to show that he is with authority to represent the 2nd and 3rd applicants in the instant application.
- f. That having found that the applicants have failed in their joinder application, then their prayer for injunctive order fails. Under section 27 of *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the events unless otherwise ordered by the court. In this instance, I find no good cause to change from that common edict, and the 1st applicant should pay the plaintiffs’ costs in application.
6. Having come to the finding that the applicants notice of motion dated 23rd April 2024 is without merit, the court orders as follows:
- a. That the said application is dismissed.
 - b. The 1st applicant to pay the plaintiffs’ costs.
- Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 13TH DAY OF NOVEMBER 2024.

S. M. KIBUNJA, J.



ELC MOMBASA.

In the presence of:

Plaintiffs : Mr. Khalid Salim

Defendants : No appearance

Applicants : No appearance

Leakey – Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

