



**Chania Logistics Limited v Karanja & 3 others (Environment & Land
Case E129 of 2024) [2025] KEELC 3093 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3093 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E129 OF 2024
EK MAKORI, J
MARCH 27, 2025**

BETWEEN

CHANIA LOGISTICS LIMITED PLAINTIFF

AND

JOSEPHINE NJOKI KARANJA 1ST DEFENDANT

DIRECTOR OF SURVEYS 2ND DEFENDANT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) 3RD
DEFENDANT**

CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

1. The Plaintiff's Notice of Motion application dated 18th December 2024 seeks the following interlocutory orders:
 - a. Pending the hearing and determination of this suit, an order is hereby issued directing the unconditional removal by the 1st Defendant of the gate erected at the end of the public access road separating Plaintiff's parcel, L.R. No. MN/III/11745 and parcels L.R Nos. 3083-3094, as defined by beacons P1-P2 and P33-P34 represented on survey, plans F/R No.286/114 and F/R No. 624/167 and specifically erected at intersections of beacons P2 and P34, the demolition of the illegal structures on asbestos erected thereon, and the safe and immediate disposal of the asbestos materials under the supervision of the 3rd Defendant herein and at the cost of the 1st Defendant, in default of which the Plaintiff is to cater for the costs and which costs shall be recoverable from the 1st Defendant, and which order shall be enforced by the Officer Commanding Police Station, Mtwapa Police Station and or Officer Commanding Police Division (OCPD), Mtwapa or any nearest police station.



- b. Pending the hearing and determination of this suit, an order does and is hereby issued barring and or restraining the 1st Defendant and or her agents, relatives, or employees from occupying, trespassing on, remaining upon, carrying out illegal and hazardous construction activities on and or blocking the public access road separating Plaintiff's parcel L.R. No. MN/III/11745 and parcels L.R Nos. 3083-3094, as defined by beacons P1-P2 and P33-P34, represented on survey plans F/R No. 286/114 and F/R No. 624/167, which order shall be enforced by the Officer Commanding Police Station, Mtwapa Police Station, or the Officer Commanding Police Division (OCPD), Mtwapa, or any nearest police Division.
 - c. Costs of the application be borne by the 1st Defendant.
2. The Plaintiff's application is supported by the affidavit sworn on the same date by its director, David Kimani, and the supplementary affidavit he swore on 31 January 2025:
 - a. The Plaintiff is the lawful registered owner of the property known as MN/III/11745, situated North of Mtwapa Creek, represented on survey Plan F/R No. 624/167.
 - b. There is a 15.25m wide designated public access road leading to the Plaintiff's property as defined by beacon numbers P1-P2 and P33 –P34 represented on survey plans F/R No. 286/114 of 29th November 1995 and F/R No.624/167 of 19th December 2018 which is in-between the Plaintiff's property and parcels L.R Nos. 3083-3094.
 - c. The 1st Defendant has illegally and without justification encroached onto the public access road and blocked the same with a red iron gate on concrete pillars erected at the intersections of beacons P2 and P34, thereby permanently blocking the Plaintiff's agents and/or workers from quickly accessing its property as well as used by members of the public, as evident in the survey report dated 9th December 2024.
 - d. The survey report dated 9th December 2024 further demonstrated that the 1st Defendant has not only blockaded the public access road and hampered the Plaintiff's agents/workers access to its property but has further erected an illegal structure using the harmful and highly hazardous asbestos as the roofing material thereby permanently blocking the public access road to the detriment of the Plaintiff and other members of the public and is perennially exposing them to serious health hazard as asbestos is a cancer-causing material.
 - e. Despite repeated complaints and demands that the 1st Defendant unblocks the public access road by demolishing the illegal gate and structures on the public access road and properly disposes of the hazardous asbestos in line with the protocols and guidelines set by the 3rd Defendant herein as contemplated by the Environmental Management and Co-ordination (Waste Management) Regulations 2006, the 1st Defendant has with abandon contemptuously declined to heed to the demands and complaints.
3. The 1st Defendant opposes the Plaintiff's application through her replying affidavit sworn on 28th January 2025. Through this replying affidavit, the 1st Defendant categorically states that her three consolidated properties are neither a road nor a road reserve but are merely a proposed feeder road that was never surveyed or designated after her neighbor, Kalume Kitsaumbi, allegedly refused to have the same feeder road pass through his land.
4. The 1st Defendant also deposes that Plaintiff has alternative access roads to her parcel of land and should, therefore, not be allowed to evict her from the public access road, as she has nowhere else to go.



5. The 3rd Defendant's Site Inspection Report, dated January 13, 2025, demonstrates that the buildings she has constructed on the public access road are unoccupied, dilapidated, and built with hazardous asbestos materials, which, if inhaled, can cause cancer and other life-threatening diseases. The 3rd Defendant has, through this report, further recommended the immediate removal of this asbestos material and its safe disposal due to the life-threatening risks it poses.
6. The 2nd Defendant's replying affidavit, sworn by Sub-County Surveyor Lee Dzoro on 27th January 2025, exhibits the survey report dated 13th January 2025. Through this replying affidavit and the survey report, the 2nd Defendant confirms that according to the original survey plans authenticated by the Director of Surveys that are in their custody:
 - a. There is a 17.33m-wide designated public access road leading to the Plaintiff's property, as defined by beacon numbers P1-P2 and P33-P34, represented on survey plans F/R No. 286/114 dated 29 November 1995 and F/R No. 624/167 dated 19 December 2018.
 - b. The 1st Defendant's house and semi-permanent house are located within the public access road. They are gated, while the other areas within the public access road feature several flowering trees.
 - c. The 1st Defendant's houses and flower trees completely block this public access road.
 - d. The blocked public access road serves only as an alternative route for parcels numbered MN/III/3083, MN/III/3084, MN/III/3086, and MN/III/3865.
7. In paragraph 28 of her replying affidavit, the 1st Defendant has deposed that a proper survey and establishment of the correct set of facts will rest this issue of whether she has constructed on a public access road once and for all. This has to await a hearing.
8. Parties were directed to submit their views on the application in writing. As highlighted above, two reports were procured to ascertain the status of the alleged asbestos and another to determine whether an established access road exists, as averred by the Plaintiff.
9. The issue I frame for the court's determination is whether, at this point, a mandatory injunction can be issued as proposed by the Plaintiff and who should bear the costs of the application.
10. Mr Keaton for the Plaintiff, supported by the two expert reports, believes that this is a fit and proper case for a mandatory injunction to be issued.
11. Mr. Akanga, on behalf of the 1st Defendant, contends that ownership of the Plaintiff's land is heavily contested in the case of Malindi ELC No. E038 of 2023. The Plaintiff was sold properties that were fraudulently obtained and subdivided, but instead, the Plaintiff has opened yet another battleground here. Its ownership must be resolved first. Until and unless the suit above is resolved, Plaintiff cannot have the locus standi to sue the 1st Defendant.
12. Mr. Akanga believes the report by the surveyor, Mr. Dzoro, is highly suspect; it is clear that Dzoro nor any surveyor visited the land as ordered by the court.
13. The 1st Defendant met Dzoro in October 2024, when he came to the land following the County's quest to establish whether the 1st Defendant was on a road reserve or a feeder road. He promised to return and provide feedback after visiting the Ruaraka Survey Office. To date, he has not been seen on the ground. It is incorrect for him to state that he came to the 1st Defendant's land on 13 January 2025 to conduct a survey. He did not turn up at all. The 1st Defendant knows him personally, and so does her adult daughter. They have been on the lookout for any visitors as authorized by the Court.



No survey was carried out on January 13, 2025. If any, Lee Dzero is using data already pre-collected in October 2024, which indicates that no surveyor interviewed the 1st Defendant, who is not the original owner of the land. He states that the survey was conducted by one of the surveyors, not him. He does not specify who conducted the study. It is, therefore, correct that Lee Dzero is adopting maps from a predetermined source, which he is not disclosing.

14. Mr. Akanga contends that the report does not state that the road is rerouted and that the Plaintiff's plots can be accessed using two public roads that the original owners of this land rerouted before any of this data was submitted. It is also not stated when the public roads were surveyed, mapped, or registered by the National Survey Office. The original owners had proposed a road on the land, but a neighbouring mother plot owner refused to have the roads pass through his land; they rerouted this road, hence the existing road that serves the Plaintiffs. Given that two roads serve the Plaintiff's plots, it's conceivable that, after 36 years of living on the land they purchased, it's now being stated that they live on a public access road. Behind the 1st Defendant, two other purchasers also live on the alleged "public road." Even if she is evicted, the road will not be opened, as there are two more owners on the same stretch. There is no evidence to suggest that this data was authenticated by the survey director as of 1990, when she purchased the property. Even after zooming out the annexed maps, it is possible to make out the alleged details showing any encroachment or blocked access road. Neither Counsel nor the surveyor has indicated on the maps the blocked access on annexures LD3, LD4, or LD6. These maps require expert interpretation before the court can issue any decisive orders, a position the court is advised to maintain for now. Eviction at the interim stage should be discouraged.
15. The court needs to narrow it down to Annexure LD 8, a sketch that is clear enough. It shows that there is a clear road marked by beacons P5, P4, P3, P2, P34, P35, and P188, which passes by the 1st Defendant's land and upon which the Plaintiff has clear, unimpeded access via a public road. That there is no Public access through the 1st Defendant's land as alleged.
16. Mr. Akanga proceeds to state that the temporary orders sought are couched in mandatory terms. If the court proceeds to issue this order, there will be no need to proceed with the main suit. In short, the Applicant seeks to have the court determine the entire suit at this juncture via this application. It is clear that Plaintiff was never a party to, nor has any knowledge of, who created the feeder roads within 539/III/MN when they were constructed, or why they were created, nor any history that determined the diversion. If any diversion was made by 1990, did the landowner have the right to sell the resultant land not utilized in creating the initial feeder roads?
17. Mr. Akanga submits that a road becomes a public road when the Survey of Kenya surveys it. The then-owner of the land must originate this survey. "street or 'road" has been defined by Interpretation and General Provisions Cap 2 to include a highway, street, road, bridge, square, court, alley, lane, bridleway, footway, parade, thoroughfare, passage or open space to which the public are entitled or permitted to have access whether on payment or otherwise.
18. As submitted by the Applicant - the yardstick for issuance of a mandatory injunction is as held in *Shariff Abdi Hassan v Nadhif Jama Adan* [2006] KECA 268 (KLR), where the Court of Appeal held thus:

"The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case."



19. Further, in *Mwangi v Erdermann Property Limited (Civil Appeal E064 of 2021)* [2023], KEHC 17271 (KLR), the court held that for mandatory injunctions to be issued, an applicant must, in addition to satisfying the parameters for the issuance of an interlocutory injunctive order, establish the existence of special circumstances.
20. In the *County Government of Kitui v Sonata Kenya Limited & 2 others* [2023] KEELC 16543 (KLR), the Court granted mandatory and prohibitive injunctions at both the interlocutory and final stages concerning the removal of asbestos. The court had the following to say:

“No evidence has been placed before this court to challenge the position that the area where the suit parcel of land Nzambani/Maluma/690 is situated is a water catchment area and any deposit of asbestos waste material would be detrimental to the land, air and water resources in particular the Thua River. The evidence on record confirms that in the event that the asbestos waste material were to find its way into the land, air, and water and into contact with the residents of Maluma location, the same will cause serious harm to health as the said asbestos is said to be high risk, harmful and hazardous materials which does not decompose, decay nor burn and once inhaled or exposed to the environment, the fibres cling to the respiratory system and can cause mesothelioma cancer, lung cancer, and asbestosis.”
21. As further submitted by the Applicant – a position I agree with - In *Almed v Manasseh Benga & another* 2019] eKLR, the Court held thus:

“Where it is clear that the defendant's act complained of is or may very well be unlawful, the issue of whether or not damages can be an adequate remedy for the plaintiff does not fall for consideration. A party should not be allowed to maintain an advantageous position he has gained by flouting the law simply because he is able to pay for it.”
22. Further, in the case of *Locabail International Finance Ltd v Agro-Export and Another* [1986] 1 ALL ER 901 where it was stated thus:

“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.”
23. In the case of *Kamau Mucuha v The Ripples Ltd* [1993], eKLR Cocker JA., after referring to the *Locabail Case*, stated thus:

“A party, as far as possible, ought not to be allowed to retain a position of advantage that it obtained through a planned and blatant unlawful act...”
24. In The case of *Jaj Super Power Cash and Carry Ltd v Nairobi City Council and two others*, Civil Appeal No. 111 of 2002, the Court of Appeal stated:

“This Court has recognized and held in the past that it is the trespasser who should give way pending the determination of the dispute, and it is no answer that the alleged acts of trespass are compensable in damages. A wrong doer cannot keep what he has taken because he can pay for it.”
25. The Plaintiff initiated legal action against the 1st Defendant, requesting court orders for the removal of the gate located at the end of the public access road at the intersection of beacons P2 and P34. The



- plaintiff also seeks the demolition of illegal structures erected on the site, which was constructed using hazardous asbestos, along with the safe and immediate disposal of the asbestos under the supervision of the 3rd Defendant.
26. Additionally, the Plaintiff is requesting orders to prevent the 1st Defendant from occupying, trespassing on, or remaining on the property, as well as from engaging in illegal and hazardous construction activities or obstructing the public access road that separates the Plaintiff's parcel, L.R. No. MN/III/11745 from parcels L.R. Nos. 3083-3094.
 27. Plaintiff has provided evidence, including a Survey Report dated December 9, 2024, indicating that if the requested orders are not granted, Plaintiff's right to access and utilize the public road will continue to be infringed upon by the 1st Defendant. Furthermore, the Plaintiff's agents and workers may face irreparable harm and danger, including the risk of death, which cannot be compensated through monetary damages due to the confirmed hazardous nature of asbestos.
 28. The construction of the premises with hazardous materials has been verified by the 3rd Defendant, who has issued a notice and Improvement Orders requiring the 1st Defendant to demolish the structures and dispose of the asbestos safely. The 3rd Defendant has also stated that the site must undergo comprehensive decontamination and air quality testing before it can be deemed safe for reoccupation or further use.
 29. The 3rd Defendant has called for the prompt removal of the asbestos roofing by a licensed contractor specializing in asbestos management, as well as the proper disposal of the resulting asbestos waste due to the significant risks it poses to human health and the environment.
 30. In her responding affidavit, the 1st Defendant does not contest the fact that she constructed the house and semi-permanent structure using illegal and hazardous asbestos. No evidence to the contrary has been presented. Article 42 of *the Constitution* ensures that every individual has the right to a healthy and clean environment. According to the report submitted by the 3rd Defendant, the Plaintiff has presented a prima facie case with a likelihood of success, justifying the issuance of a mandatory order without the necessity of a comprehensive hearing, as the 1st Defendant is in the wrong.
 31. Regarding the access road, the 1st Defendant has contested the Plaintiff's application, arguing that her property does not qualify as a public access road but is instead a proposed feeder road that has neither been surveyed nor officially designated. However, this claim is contradicted by the Survey Report dated January 13, 2025, which was prepared and submitted by the 2nd Defendant. The Director of Survey is responsible for overseeing all land surveying and mapping activities in the country, including conducting national surveys, maintaining precise geographical data, regulating licensed surveyors, and resolving land boundary disputes.
 32. The Survey Report dated January 13, 2025, from the 2nd Defendant, who serves as the principal authority on land measurements and documentation in Kenya, confirms that the specified area is indeed a designated and surveyed public access road that the 1st Defendant has entirely obstructed.
 33. Furthermore, the 2nd Defendant's report indicates that this public access road serves solely as an alternative route to other areas and does not provide access to the Plaintiff's property. Consequently, the 1st Defendant has permanently restricted the Plaintiff's access to their land. Given these circumstances, Plaintiff has established a prima facie case against the 1st Defendant with a likelihood of success, as the available evidence indicates an ongoing violation of rights. This supports the need for a mandatory order to be granted without requiring a full hearing, as the Survey Report, clearly authenticated by the Survey of Kenya, illustrates the 1st Defendant's wrongful encroachment upon



and permanent blocking of the public access road. The 1st Defendant tendered at least no contrary evidence.

34. Arising from the foregoing, these will be the final orders from the court:
- a. Pending the hearing and determination of this suit, a mandatory injunction be and is hereby issued pursuant to the NEMA Improvement Orders issued by the 3rd Respondent dated 13th January 2025 that the 1st Respondent, at her costs, immediately removes the asbestos roofing on the offending building and disposes the same within 30 days hereof following the guideline contained in those orders and that the same be implemented under the supervision of the 3rd Respondent. Failure to do so, the Applicant to undertake the same and bill the 1st Respondent.
 - b. Pending the hearing and determination of this suit, and pursuant to the Survey Report dated 13th January 2025 prepared by one Lee Dzoro – Sub-County Surveyor Kilifi, a mandatory injunction be and is hereby issued directing the removal of a section of the wall between beacon MM1 & P2, removal of permanent house, semi-permanent house and flower trees that fall within and that have blocked the access road as per the sketch map marked LD8. The same shall be undertaken within 90 days from the date of this ruling. The orders of this court shall be signed and affixed to the offending structures to ensure compliance within the stipulated period.
 - c. Costs of the application awarded to the Applicant to be borne by 1st Respondent.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 27TH DAY OF MARCH 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr.Keaton & Mr.Ndegwa, for the Applicant

Mr.Akanga, for the 1st Respondent

Ms. Ekiru, for the 2nd & 4th Respondents

Mr. Ganya, for the 3rd Respondent

Happy: Court Assistant

