



REPUBLIC OF KENYA



**Sheikh v Mungai (Environment and Land Appeal 4 of 2022)
[2024] KEELC 13677 (KLR) (9 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13677 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL 4 OF 2022
FM NJOROGE, J
DECEMBER 9, 2024**

BETWEEN

SAEED SIDOMAN SHEIKH APPELLANT

AND

PHYLLIS NYOKABI MUNGAI RESPONDENT

*(Being an appeal arising from the Ruling and Order of Hon. J.M Kituku delivered
on 12th January 2022 in Kilifi SPMCC ELC MISC APP NO. 117 of 2021)*

JUDGMENT

1. Vide a Memorandum of Appeal dated 9/2/2022, the Appellant appeals to this court challenging the Ruling dated 12/1/2022 in Kilifi SPMCC ELC Misc. No. 117 of 2021 wherein the court allowed the Respondent's application by granting a mandatory order of injunction.
2. A brief background of this case is that the Appellant was the Defendant and the Respondent the Plaintiff in Kilifi SPMCC ELC MISC APP NO. 117 of 2021. The substantive claim in the Plaintiff was an order of permanent injunction restraining the Defendant from preventing the Respondent from accessing her property being Plot No. 7963/III/MN and a mandatory injunction ordering the Appellant to demolish the perimeter wall touching on the Respondent's property. Alongside that plaintiff was a notice of motion application dated 14/10/2021 wherein the Respondent sought temporary orders of injunction and a mandatory order of injunction ordering the Appellant to demolish the said perimeter wall.
3. The trial court heard the application and found that an order of mandatory injunction was merited. The learned magistrate held: -

“27. In this case, unless the fence touching on Plot No. 7963/III/MN is demolished, the Plaintiff will not have access to her property, and that will even



defeat the whole purpose of the present application. I am satisfied this is one of the exceptional cases where a mandatory injunction ought to issue. I allow the application in terms of prayer 5. Defendant granted 60 days to demolish the fence and remove any debris thereof. In default, the Plaintiff at liberty to take the appropriate legal steps to ensure compliance.”

4. Aggrieved by that decision, the Appellant preferred the present appeal to set aside the impugned ruling on the following grounds: -
 1. The learned trial magistrate erred in law and in fact in finding the respondent/plaintiff had established a prima facie case with probability of success;
 2. The learned trial magistrate failed to consider that the Respondent had failed to prove substantial loss that would be occasioned;
 3. The learned trial magistrate erred in law and in fact in allowing a mandatory injunction for demolition of the Appellant’s fence over LR No. 7963/III/MN at an interlocutory stage;
 4. The learned trial magistrate erred in law and in fact by failing to consider that the Appellant stands to suffer irreparable economic harm and loss by the grant of the mandatory injunction;
 5. The learned trial magistrate considered irrelevant factors in making its decision;
 6. The learned trial magistrate erred in law and in fact by disregarding and failing to consider the Appellant’s evidence on acquisition and ownership of the suit property and his submissions.
5. On 7/10/24, directions were issued that the appeal be canvassed by way of written submissions. The appellant was to file submissions within 14 days from that date to prosecute the appeal. As at the time of writing this judgment, no submissions had been filed by either party, and the time to do so had long since lapsed. In the circumstances, I find that the grounds raised on appeal have not been substantiated, and for failure to comply with this court’s directions, I dismiss the appeal with costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 9TH DAY OF DECEMBER 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

