



REPUBLIC OF KENYA



**Teka & 6 others v Karisa (Sued on Behalf of Gede/Mitangani Community)
& 3 others; County Government of Kilifi (Interested Party) (Civil Suit
5 of 2024) [2024] KEELC 13710 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13710 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
CIVIL SUIT 5 OF 2024
EK MAKORI, J
DECEMBER 9, 2024**

BETWEEN

**KAINGU TEKA 1ST PLAINTIFF
RUGO JIMBALE NYAWA 2ND PLAINTIFF
MWADULE MDOE 3RD PLAINTIFF
EMMANUEL MWAYAYA 4TH PLAINTIFF
ISSAK MOHAMED 5TH PLAINTIFF
ALI HUSSEIN 6TH PLAINTIFF
LUNGO SOLOLO NYAWA 7TH PLAINTIFF**

AND

**ROBERT CHAMGAWA KARISA (SUED ON BEHALF OF GEDE/MITANGANI
COMMUNITY) 1ST DEFENDANT
ABDI ALI 2ND DEFENDANT
ABDULLAH SOMO 3RD DEFENDANT
COUNTY GOVERNMENT OF KWALE 4TH DEFENDANT**

AND

COUNTY GOVERNMENT OF KILIFI INTERESTED PARTY



RULING

1. The Plaintiff filed the suit herein contemporaneously with a Notice of Motion Application dated 18th January 2024 seeking interlocutory injunction directed at the Defendants from dealing with or interfering with the suit property in any manner whatsoever till the suit is heard and determined. At the same time, the 1st to 3rd Defendants filed A Preliminary Objection claiming that the Plaintiff did not have locus standi to institute this suit since the subject matter is Community land as assigned under the Community Land Act 2016, significantly offending Sections 4,5,6,7,8,9 and 10 of the Act.
2. The Court directed parties to canvass the two Motions through written submissions.
3. Having reviewed the materials and submissions by the parties on the two motions, I frame the issues for this Court's decision as to whether the Preliminary Objection as raised is pertinent and should be allowed, whether the issuance of an injunction at this stage is appropriate, and who should bear the costs of the two motions.
4. At the centre of the current suit is a piece of land measuring approximately 10909.457 Hectares or the about situated North East of Kwale County bordering Kilifi County. The Plaintiffs claim it is an ancestral land meant for the Duruma Community. They have long leased it out for grazing to the 5th Plaintiff at consideration. The 1st to the 3rd Defendant claim this is a community land meant for the Gede/Mitngani Community of Kilifi County. The County Government of Kwale – the 4th Defendant, claims a stake in the suit property as having critical infrastructure like schools and hospitals. In contrast, Kilifi County claims that under Articles 60 and 66 of the Constitution, the County has a stake in the land use and planning, hence a stake in the suit property.
5. The Court's jurisdiction is of paramount importance. Without it, the Court is unable to proceed. As held Nyarangi JA in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR, the Court must have jurisdiction to act:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

6. In this case, it is alleged that the Plaintiff has no locus standi since this is Community land. But then again, the pleadings show that the land in dispute is community land, and the plaintiffs have a stake as beneficiaries, hence a stake in the suit property.
7. A Preliminary Objection, once raised, should be on a pure point of law.
8. In this matter, the ownership wrangles permeate the entire substratum of what the Plaintiff, defendants, and the Interested Party are claiming – hence, the Plaintiffs will have locus standi to sue over what they claim is part of their Community land; therefore, the Preliminary Objection will be dismissed.
9. For an injunction to be attained as held in the celebrated case of Giella v Cassman Brown & Company Limited [1973] E.A. 360, the following threshold has to be surmounted:

“The applicant should satisfy the Court that he has a prima facie case with a probability of success. Secondly, he stands to suffer irreparable loss or injury which cannot be compensated



by damages, and thirdly, if the Court is in doubt, it should decide on a balance of convenience.”

10. Firstly, this Court has to ascertain whether the applicant has established a prima facie case with the probability of success as held in *Mrao v First American Bank of Kenya & 2 others* [2003] KLR 125:

“A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case.’ It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has been infringed by the opposite party as to call for an explanation in rebuttal from the latter.”

11. And, that the principles stated in the *Giella* case (*supra*) are to be addressed sequentially as held in *Kenya Commercial Finance Company Ltd v Afraha Education Society* [2001] 1 EA 86 as cited in *Karen Bypass Estate Ltd v Print Avenue and Company Ltd* [2014] eKLR:

“so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt then the third condition can be addressed.”

12. As already alluded to, the suit property is being claimed by both the Plaintiffs and the Defendants, with their respective Counties, Kwale and Kilifi, joining in tow. I can see there have been security meetings over the suit property. At this point, it will be difficult to ascertain the valid legal or equitable owner(s) for purposes of an injunction.
13. The application thus for an injunction will not succeed and is hereby dismissed.
14. Considering the nature of the claim beforehand, costs will be in the cause.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 9TH DECEMBER 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Kithome for 4th Defendants.

Ms. Mwabaya, for the Interested Party

Happy: Court Assistant

In the Absence of:

Ms. Amugune, for the Plaintiffs

Mr. Omurwa, for the 1st to 3rd Defendants

