



Coast Development Authority v Nzamba & 50 others (Environment & Land Case 76 of 2011) [2025] KEELC 2869 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2869 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 76 OF 2011
FM NJOROGE, J
MARCH 27, 2025**

BETWEEN

COAST DEVELOPMENT AUTHORITY PLAINTIFF

AND

**ADAM KAZUNGU NZAMBA & 50 OTHERS & 50 OTHERS & 50 OTHERS &
50 OTHERS & 50 OTHERS & 50 OTHERS DEFENDANT**

RULING

1. For determination is a Notice of Motion dated 22/10/2024 brought under Articles 22, 23, 40, 47 and 50 of *the Constitution* of Kenya, Sections 1A, 1B, 3A and 100 of the *Civil Procedure Act*, Order 40 rule 1, Order 51 rule 3 of the *Civil Procedure Rules*, 2010, and Section 3 (1) of the *Trespass Act*. The orders sought were tailored as follows: -
 1.Spent.
 2. Spent.
 3. That thus Honourable Court do grant leave to the Plaintiff to amend its Plaintiff in terms of the annexed draft amended plaintiff;
 4. That the amended plaintiff be filed and served upon the named parties within 14 days from the date of the court order issued;
 5. That this honourable court do issue compelling orders against the 11th, 38th and 39th Defendants herein to produce the list of other parties living on the suit properties;
 6. That this honourable court be pleased to issue an injunction restraining the Defendants/ Respondents, whether acting by themselves, servants, agents or any person acting on their account, from trespassing into, constructing, and/or interfering in any manner with the



Plaintiff's/Applicant's quiet and peaceful possession, enjoyment and use of any part or portion of the suit property pending the hearing and determination of the suit herein;

7. Spent;
 8. That the officer commanding station and officer commanding police division, Malindi Police Station do ensure compliance with orders 6 and 7 above;
 9. That the costs of this application be provided for;
 10. That the honourable court be pleased to make such further orders as it may deem just and expedient in the circumstances of this case.
2. The Application was supported by the affidavit sworn by Hafsa Thabit, who describes herself as the Plaintiff's legal officer on an even date. She deposed that since the suit was filed, the status of the suit property (LR No. 10841, Malindi) has changed with the same now about 90% occupied by illegal settlements; that through its own investigations and the office of the Kilifi County Commissioner, the Plaintiff established that there was formed a committee headed by the 11th, 38th, 39th Defendants and their advocate, which has continued to set up beacons on the suit property and is disposing portions thereof to third parties.
 3. The 11th, 38th and 39th Defendants filed a Replying Affidavit which they jointly swore on 25/10/2024, stating that the suit property was all along in the physical possession and occupation by the Defendants and others not sued herein long before the Plaintiff was registered as owner of a leasehold interest in the suit land. They asserted that it is not their duty to assist the Plaintiff identify people it desires to sue. They added that the Plaintiff has never been in occupation of the suit property and the prayer to restrain the Defendants as framed, is a mere ploy to evict them from the suit property, and steal a march against the Defendants before the suit is heard and determined. They denied the allegations that the Defendants have been subdividing and selling the suit property, and asserted that he beacons exhibited were not on the suit property. They contested that the two intended interested parties in the draft amended plaint have been residents on the suit property long before this suit was filed. The said Defendants urged the court to dismiss the application with costs, for lacking merit.
 4. In rebuttal, the Plaintiff filed a further affidavit sworn by its aforementioned legal officer on 5/11/2024, wherein she deposed that the 1st, 4th, 10th, 14th, 16th, 17th, 21st, 24th, 27th, 31st, 34th, 37th, 42nd, 45th, 46th, and 48th Defendants in the main suit and the 31st, 32nd and 34th Plaintiffs in the counterclaim (also the 45th, 46th, and 48th Defendants in the main suit) are now deceased and that they are yet to be substituted. She added that, through their advocates, they established from Talea Teacher's College, (the proposed 2nd Interested Party) that the said institution moved into the suit property in the year 2019. She annexed a copy of an audio recording regarding the same and a certificate of authentication thereto.
 5. Parties were directed to file written submissions. However, as at the time of writing this ruling, only the Defendants had complied. They filed written submissions dated 27/1/2025, wherein they submitted that they do not oppose granting leave to amend the Plaint. The Defendants' counsel added that the defendants are under no obligation to assist the Plaintiff identify persons to sue. He further argued that the Plaintiff has not met the threshold for the grant of an interlocutory injunction as was established in the case of *Giella v Cassman Brown & Company Limited* [1973] E.A. Counsel submitted that the Plaintiff's suit is founded on trespass and is therefore obligated to demonstrate that it has a right which has been apparently infringed by the Defendants so as to call for a rebuttal from the latter. Further, quoting the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, counsel argued that as pleaded in the counterclaim that the Defendants were in occupation of the suit property long before the Plaintiff was registered as owner, it was obvious that the Plaintiff's case was not so clear and



free from objection to warrant granting of an injunction as prayed. Counsel added that the Plaintiff did not also demonstrate evidence of any recent entry into the suit property.

6. Counsel further submitted that the Plaintiff did not demonstrate any loss or damage that it is bound to suffer unless the order of injunction is made. Counsel's argument was that all the allegations raised against the Defendants had not been substantiated, therefore the orders sought could not issue.

Analysis And Determination.

7. From the onset, it is clear that there was no objection to granting of leave to amend the Plaintiff. Counsel for the Defendant submitted as much. I will therefore not delve into that issue but grant it as prayed, as doing so will only be an academic exercise. Issues that require the determination of this court therefore are: -
 - i. Whether compelling orders can issue against the 11th, 38th and 39th Defendants herein to produce the list of other parties living on the suit properties;
 - ii. Whether the prayer for injunction is merited;
 - iii. Orders to be granted.
8. The Plaintiff alleged that since the suit was filed in the year 2011, the status of the suit property has since changed, in the sense that more parties have moved into the suit property; that the persons in occupation thereof even formed a committee spearheaded by the 11th, 38th and 39th Defendants who have continued to subdivide and sell portions of the suit property to third parties. The said Defendants disputed these allegations.
9. Order 1 rule 10 of the [Civil Procedure Rules](#) allows the Court to add or substitute parties at any stage of the proceedings. However, the mere fact that a party wishes to join additional persons does not, in itself, justify compelling the Defendant to disclose their identities. It is incumbent upon the Plaintiff to demonstrate that such disclosure is necessary for the just determination of the dispute. In the present case, the Plaintiff has not provided sufficient grounds to show why the information sought is exclusively within the Defendants' knowledge and why they could not have identified and sued the alleged parties. In any event, civil litigation in this jurisdiction follows the adversarial system, where the burden of proof lies with the Plaintiff. A defendant cannot be compelled to provide information that would assist the Plaintiff in building their case. To allow such an order would be to shift the evidentiary burden, contrary to the established principles of civil procedure. Moreover, this court on 23/10/2024 directed there be published in a local daily newspaper a notice notifying all the occupants or persons purporting to have any claim to the suit property to apply to be joined to these proceedings within 21 days. Such notice was ultimately published on 29/10/2024 and the period therein lapsed.
10. The Plaintiff equally sought an order of injunction restraining the Defendants from trespassing, constructing and/or interfering in any manner with the Plaintiff's quiet and peaceful possession, enjoyment and use of any part or portion of the suit property pending the hearing and determination of the suit herein. Order 40 rule 1 of the [Civil Procedure Rules](#) provides

“Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,



the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

11. It is not disputed that the Defendants are in occupation of the suit property and have since made major developments thereon. Considering that the Plaintiff’s case is based on allegations of trespass and the orders sought therein being inter alia eviction, granting the injunction as prayed would be tantamount to determining the suit at an interlocutory stage. Furthermore, and as much as the Plaintiff alleged that the Defendants have continued to dispose the suit property, no evidence was given to demonstrate such allegations. Be that as it may, I am of the view that an order of status quo should be issued for purposes of preserving the subject matter.
12. The outcome of the foregoing analysis is that the Notice of Motion dated 22/10/2024 is allowed in terms of prayer 3, and 4. For the avoidance of doubt, the status quo as of the date of this order shall be maintained, pending the hearing and determination of this suit. Costs of the application shall be in the cause. Mention of suit for further directions on 4/6/2025.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 27TH DAY OF MARCH 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

