



**Kimeu (Suing as Administrator and on behalf of Syokimau Farm Limited)
v Sumra Construction Co. Limited & 3 others (Environment & Land Case
E033 of 2021) [2023] KEELC 16571 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16571 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E033 OF 2021
CA OCHIENG, J
MARCH 27, 2023**

BETWEEN

**PAUL MASILA KIMEU (SUING AS ADMINISTRATOR AND ON BEHALF OF
SYOKIMAU FARM LIMITED) PLAINTIFF**

AND

SUMRA CONSTRUCTION CO. LIMITED 1ST DEFENDANT

WILFRED NG'ANG'A NGARUIYA 2ND DEFENDANT

ABDI AZIZ HUSSEIN 3RD DEFENDANT

SAMURA ENGINEERING LIMITED 4TH DEFENDANT

RULING

1. Through a notice of motion application dated the March 18, 2021, the Plaintiff seeks the following orders against the Defendants:
 - a. Spent
 - b. Spent
 - c. That pending the hearing of the suit and the Application herein, this Honourable Court do issue a temporary order of injunction restraining the Defendants and/or their servants, agents, representatives or assignees or any other person acting under their direction from trespassing, entering, occupying, stopping, causing delay or disrupting the construction works and/or interfering in any manner whatsoever with the ownership and possession of Land Reference Number 12715/307.



- d. That OCS Athi River Police Station be directed to ensure enforcement of the orders granted by this Honourable Court.
 - e. That costs of the Application be provided for.
2. The Application is premised on grounds on the face of it and supported by the Affidavit of one Paul Masila Kimeu where he deposes that he is the duly appointed administrator of Syokimau Farm Limited, the company having been wound up. He avers that the government had allotted the company all that parcel of land reference number 12715/307 on November 1, 1983 and these propriety was registered and Certificate of Title issued to that effect subject to the subdivision. He states that the Company and its members have had quiet possession and enjoyment of the parcel of land since 1983.
 3. He claims on 8th February, 2020, the members had started developing the parcel and erecting a perimeter wall when the Defendants including their agents and paid goons trespassed on the suit land, disrupted as well as damaged the partly constructed perimeter wall. Further, that they made away with the Applicant's construction materials. He explains that they reported the matter to Mlolongo and Athi River Police Station and that the incident had occasioned untold loss, damage and inconvenience to the members of the Company. He insists that the proprietary rights of the suit land belong to the members. He contends that the complaint had resulted to investigations by DCI into the ownership of the subject land and the Ministry of Lands vide a letter dated January 20, 2021, confirmed that the suit land is among the many parcels of land owned by Syokimau Farm Ltd.
 4. He reiterates that the ownership by the Applicant has not been challenged by the Respondents in a court of law. He argues that unless the court intervenes, the Respondents would continue trespassing and interfering with the Applicant's parcel of land, disrupting and damaging the construction works therein occasioning the Applicant irreparable loss and damage with breach of peace.
 5. In opposing the instant Application, the 2nd Defendant, Wilfred Ng'ang'a Ngaruiya, filed a Replying Affidavit where he deposes that suit land known as L.R 12715/307 is owned by a company known as Samura Engineering Limited ("the Company") in which he is a Director. He explains that he purchased the said suit land from one Muindi Nzimba in 1993 and attached a copy of the Sale Agreement to that effect. He explains that the Company has been in quiet possession of the suit land, contrary to the averments by the Applicant, and that they have been paying all the requisite land rates and rents since the year 1993. He states that they had done developments thereon including drilling a borehole and applying for Change of User from single dwelling to commercial cum residential use which resulted to Change of Land Reference Number to L.R No. 12715/307. He avers that he discovered fraudulent activities on the land in the previous year and filed Machakos ELC No. 2 of 2021, which the Applicant has failed to disclose. Further, that there are interim orders issued in 2021 in the said matter which the Applicant has also failed to disclose so. He challenges the Applicant's allegation of constructing a wall on the suit land and puts him to strict proof. It was his contention that he has never been summoned to Mlolongo Police Station in respect to the suit land and that the alleged letter dated January 20, 2021 is a forgery. He reiterates that the alleged Certificates of Official searches as adduced were also a forgery as there is no evidence to show that they are from the Lands' office. He reaffirms that the 4th Defendant is the registered owner of the suit land as per the annexed Certificates of Official Searches. Further, that the Applicant has not demonstrated how he acquired title to the suit land and he is attempting to superimpose a new title over a pre-existing one. In conclusion, he avers that the Applicant was abusing the court process for various reasons, including the filing of multiple suits against disguised identities who are not owners of suit land. He prayed that the Application be dismissed with costs.



6. The 4th Defendant likewise filed a Replying Affidavit sworn by its Director Mungai Ngaruiya, in opposition to the instant Application. He reiterated the averments as sworn in the Affidavit of the 2nd Defendant, Wilfred Ngaruiya.

The Application was canvassed by way of written submissions.

Submissions by the Plaintiff/Applicant

7. The Plaintiff in his submissions reiterated the contents of his Supporting Affidavit and provided a detailed background of the suit land. He contended that the same was allocated to one Kiala Muinde who unfortunately failed to pay for the requisite fees and the land reverted back to the Company. He challenged the provisional titles in that they were issued without any gazettelement or publication. The Plaintiff insisted that the Company had been in quiet possession of the land and had been paying the requisite rents and rates. He claimed that the invasion by the Defendants had led to them filing a report at the Athi River Police Station and to the DCI resulting in a report from the Chief Registrar detailing all the parcels owned by the Company. He reiterated that he had satisfied the requirements for grant of temporary injunction as set out in the case of *Giella vs Cassman Brown & Co. Ltd* [1973] E.A 358. He averred that the 2nd Defendant and the Interested Party were not purchasers for value since none bought the land from a legal owner as the purported vendors were not the shareholders of the suit land. To buttress his averments, he relied on very many decisions which I deem relevant.

Submissions by the 4th Defendant/Respondent

9. The 4th Defendant in its submissions reiterated the contents of its Replying Affidavit and insists that the Applicant has not established a prima facie case. It contends that it has compelling evidence to prove it is the owner of the suit land, has taken possession and undertaken development projects thereon. It argued that the Applicant will not suffer irreparable loss, but the 4th Defendant who would suffer more loss since their projects would stall. It concluded that it already presented other orders to this court dated the January 21, 2021 in relation to the suit land in ELC No. E002 of 2021 and that the current Application is sub judice. To buttress its averments it relied on various decisions which I deem relevant.

Analysis and Determination

10. Upon consideration of the instant notice of motion application including the respective Affidavits, annexures and rivaling submissions, the only issue for determination is whether the Plaintiff is entitled to orders of an interlocutory injunction restraining the Defendants from the suit land pending the outcome of this suit.
11. The principle considerations set for the granting of interlocutory injunctive orders are well outlined in the renowned case of *Giella V Cassman Brown & Co. Ltd* (1973) EA 356. Further, in the case of *Mrao Ltd v First American Bank Ltd & 2 Others*, (2003) KLR 125 at page 137 the Court proceeded to define a prima facie case where it stated that:

“It is a case in which on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
12. As to whether the Plaintiff has established a prima facie case to warrant the injunctive orders as sought, the Applicant argues that it is the duly registered owner of the suit land and annexed a copy of the Search and Copy of Certificate of Title to that effect. He confirms that Syokimau Farm Limited was wound up and he was appointed as the Administrator in 2013. He contends that the suit land was



allocated to Kiala Muinde hence Muindi Nzimba did not have capacity to sell it to the 4th Defendant. However, I note he has not produced any Affidavit from the said Kiala Muinde to confirm these averments. The Plaintiff has produced a copy of the Gazette Notice dated 8th August, 2013 confirming members agreed to voluntarily wind up the company on 26th July, 2013. He further produced copies of search and title as well as correspondence exchanged between Ministry of Lands and DCI. I note the Plaintiff in his Supporting Affidavit failed to divulge to this court that there is a related matter being ELC No. 2 of 2021, where the suit land is the same. Further, that Justice Angote had already issued interim orders in 2021, restraining any party from dealing with the said land. In response the 4th Defendant insists that the search certificate by the Applicant was a forgery and that they are the duly registered owners of the land. It contends that it has compelling evidence to prove it is the owner of the suit land, having taken possession and undertaken development projects thereon. The 4th Defendant presented documents of title including a Sale Agreement dated the 3rd December, 1993 between Muindi Nzimba and Samura Engineering Limited, an approval for change of user from the Machakos County date the 25th March, 2013; receipts showing it had been paying land rent and rates to the Athi River Urban Council from 1994. It further produced its Certificate of Title including a receipt showing payment of stamp duty to the Kenya Revenue Authority. I further note that in 2013 it had a contract Agreement for drilling of a borehole on the suit land. From the Sale Agreement dated the December 3, 1993 I note it was presented to the Land Title Registry on December 7, 1993 at 14.15 hours.

13. From the analysis of the documents presented, it is my considered view that the Plaintiff except for waving the title, gazette notice and search, has failed to provide any proof as to whether the Company had been paying land rent and rates nor that it was still in possession of the suit land noting that the said company had wound up and titles given to members as indicated in the minutes which were annexed to the Supporting Affidavit. Further, the copy of Certificate of Title produced by the Plaintiff is not certified as a true copy of the original.
14. Based on the facts as presented including my analysis above while associating myself with the decisions cited above, I find that the Plaintiff has not established a prima facie case to warrant of the orders of temporary injunction as sought. Further, in relying on the case of *Nguruman Ltd. Vs. Jan Bonde Nielsen* CA No. 77 of 2012, where the Court of Appeal held that in instances where a party has failed to establish a prima facie case, the court need not proceed to make a determination of the other two limbs on injunction, and I will hence decline to do so.
15. It is against the foregoing, that I find the Notice of Motion Application March 18, 2021
Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 27TH DAY OF MARCH, 2023

CHRISTINE OCHIENG

JUDGE

