



REPUBLIC OF KENYA



**Kibii & 7 others v Keiyo Housing Co-op Society Ltd & another (Environment & Land Case E014 of 2022) [2023] KEELC 16445 (KLR) (20 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16445 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E014 OF 2022  
EO OBAGA, J  
MARCH 20, 2023**

**BETWEEN**

**ELIZABETH JEPKEMOI KIBII ..... 1<sup>ST</sup> PLAINTIFF  
JOSEPH KIPTUM LAGAT ..... 2<sup>ND</sup> PLAINTIFF  
HENRY KIBOR CHESIRE ..... 3<sup>RD</sup> PLAINTIFF  
JOSEPH TOROITICH KUKAI ..... 4<sup>TH</sup> PLAINTIFF  
FRANCIS CHEPKOK TUWEI ..... 5<sup>TH</sup> PLAINTIFF  
STIMSON KIPKORIR KIPTOO ..... 6<sup>TH</sup> PLAINTIFF  
JOHN KIPKEMBOI KWAMBAI ..... 7<sup>TH</sup> PLAINTIFF  
JOHN KIPRONO CHEMAGUT ..... 8<sup>TH</sup> PLAINTIFF**

**AND**

**KEIYO HOUSING CO-OP SOCIETY LTD ..... 1<sup>ST</sup> DEFENDANT  
UASIN GISHU COUNTY GOVERNMENT ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiffs/applicants filed a notice of motion dated February 21, 2022 in which they sought the following orders: -
  1. Spent
  2. The respondents either by themselves, servants, agents, assignees and any other person purporting to act on their behalf, be restrained from demolishing, reconstructing the applicants property and/or leasing, transferring and/or taking loan using the applicants



title deed of land parcel No Eldoret Municipality Block 7/72 pending the hearing and determination of this application and the main suit.

3. Costs of this application be in the cause.
2. The applicants are among the members of Keiyo Housing Co-operative Society Limited which owns LR No Eldoret–Municipality Block 7/72. On February 7, 2022 the second respondent issued an enforcement notice requiring the 1<sup>st</sup> respondent to rectify the defects on a building lying on the property.
3. The 1<sup>st</sup> respondent had consulted its members on the need to have the building on the property to be demolished and reconstructed. After obtaining approval of the members, the 1<sup>st</sup> respondent went ahead to get a contractor who was to carry out the demolition and re-construction. It is because of this that the applicants moved to court and filed the present application seeking injunctive orders against the respondents.
4. The applicants contend that they have discovered that the 1<sup>st</sup> respondent has appointed an investor to demolish and re-construct the building on the property. They further state that the 2<sup>nd</sup> respondent has already written two letters to the 1<sup>st</sup> respondent through their lawyers complaining about the need to paint the building and rectify the faulty drainage system.
5. The applicants further contend that the 1<sup>st</sup> respondent intends to demolish and reconstruct the building. They therefore seek injunctive orders to enable them convene an annual general meeting where they will elect new officials and appoint an independent auditor to audit the society’s books of accounts and expenditure.
6. The applicants are apprehensive that money given by the investor to the 1<sup>st</sup> respondent might not be able to be refunded back.
7. The 1<sup>st</sup> respondent opposed the applicants’ application based on a replying affidavit sworn on April 25, 2022 and a further affidavit sworn on January 13, 2023. The 1<sup>st</sup> respondent contends that it convened special general meeting for Kaptarakwa Zone, Chepkorio zone and Metkei zone on October 27, 2021, October 28, 2021 and October 29, 2021 respectively.
8. There were resolutions which were passed. The members mandated the officials to go ahead and engage an investor who was to demolish and reconstruct the building on the Society’s land. The new building was going to benefit the members in terms of increased rent and hence income to members.
9. The 1<sup>st</sup> respondent state that its three officials have since been summoned to the Chief Magistrates Court pursuant to the Public Health Act for failure to comply with the statutory notice requiring them to do certain acts in the notice given to them.
10. On its part, the 2<sup>nd</sup> respondent opposed the applicants’ application based on a replying affidavit sworn on November 23, 2022. The 2<sup>nd</sup> respondent contends that it cannot be enjoined from discharging its duties as stipulated under the Constitution and relevant statutes.
11. The second respondent in its mandate issued an enforcement notice to the 1<sup>st</sup> respondent on February 7, 2022. The 2<sup>nd</sup> respondent contends that the building on the society’s land is in a state which contravenes the provision of the Public Health Act and it is the mandate of the 2<sup>nd</sup> respondent to ensure that it issues notices requiring compliance and if the notices are not complied with, necessary action is taken including prosecuting the offenders in court.



12. Parties were directed to file written submissions. The applicants filed their submissions on January 16, 2023. The 1<sup>st</sup> respondent filed submissions on November 23, 2022. The 2<sup>nd</sup> respondent filed submissions on January 16, 2023. I have carefully gone through the applicants' application as well as the opposition to the same by the respondents. I have also gone through the submissions by the parties. The only issue for determination is whether the applicants have disclosed a *prima facie* case to warrant issuance of an injunction.
13. The principals for grant of an injunction were well set out in the case of *Giella v Cassman Brown & Co Ltd* (1973) EA 358. First, an applicant has to demonstrate that he has a *prima facie* case with probability of success. Second, an injunction will not issue unless the applicant will suffer injury which will not be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.
14. A *prima facie* case was defined in the case of *Mrao Limited v First American Bank of Kenya Limited* (2003) eKLR as follows: -

“...in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
15. In the instant case, it appears from the prayers in the plaint that the applicants want the intended demolition and reconstruction of the 1<sup>st</sup> respondents building stopped and new officials be elected and an independent auditor be appointed. From the materials presented before court, it's clear that special general meetings were convened in the society's three zones where resolutions were made. The officials were mandated to engage an investor to do the work and indeed an investor was engaged who has given the society some money in accordance with the agreement.
16. The 2<sup>nd</sup> respondent issued statutory notices in accordance with its constitutional mandate. The society's building was in dire need for urgent repairs. The tenants had been given notices for termination of their tenancy to pave way for a reconstruction. In the circumstances, there is no evidence that the 2<sup>nd</sup> respondent has infringed any of the 1<sup>st</sup> respondent's rights as to call for an injunction in favour of some of its members.
17. Majority of the 1<sup>st</sup> respondent's members had given their officials a go ahead to do the demolition and reconstruction. It is only the applicants who seem to be in disagreement with the manner in which the officials are going about the issue around the demolition and reconstruction of the building. In the circumstances the applicants have not demonstrated that they have a *prima facie* case with probability of success.
18. On whether the applicants will suffer irreparable harm, I answer this question in the negative. The building is in dire state of repair as per the defects noted. Its demolition and reconstruction would be for the benefit of the members. There's therefore no irreparable damage will result as to call for issuance of an injunction.
19. I have no doubt in my mind as to opt to decide the application on a balance of convenience. The society's officials followed the right procedures in getting a node from the members. The 2<sup>nd</sup> respondent was discharging its duties as provided in the law. They cannot be stopped from carrying out their duties. It is for this reason that I find that the applicants' application is devoid of merit. The applicants' application is dismissed with costs to the respondents.

It is so ordered.



**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 20<sup>TH</sup> DAY OF MARCH, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Ms. Chesoo and Mr. Cheptarus for 1<sup>st</sup> Defendant.

Mr. Mutai for 2<sup>nd</sup> Defendant.

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

**20<sup>th</sup> MARCH, 2023**

