



REPUBLIC OF KENYA



**KENYA LAW**  
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**Telposta Pension Scheme Trustees Registered v Odhiambo & 3 others (Environment & Land Case E021 of 2022) [2023] KEELC 16326 (KLR) (20 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16326 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E021 OF 2022**

**EO OBAGA, J  
MARCH 20, 2023**

**BETWEEN**

**TELPOSTA PENSION SCHEME TRUSTEES REGISTERED ..... PLAINTIFF**

**AND**

**VITALIS ODHIAMBO ..... 1<sup>ST</sup> RESPONDENT**

**HEZRON MOTINDU ONDARA ..... 2<sup>ND</sup> RESPONDENT**

**LILIAN LANGAT ..... 3<sup>RD</sup> RESPONDENT**

**SARAH NJOKI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a Notice of motion dated March 14, 2022 in which the Applicant seeks the following orders: -
  1. Spent
  2. Spent
  3. Pending the hearing and determination of this Application, the Respondents be restrained either by themselves, their servants, agents, assigns and or employees from further constructing/developing, accessing, occupying or in any way interfering with land Title Number Eldoret/Municipality Block 14/180 and Title Number Eldoret Municipality Block 14/184.
  4. An order of injunction directing the Respondents, at their own cost, to immediately demolish all the structures erected on Title Number Eldoret/Municipality Block 14/180 and title Number Eldoret Municipality Block 14/184 and remove all debris and materials from the said



premises and in default the Applicant be at liberty to demolish the structures with security from the Police station with jurisdiction over the area where the property is situated.

5. That costs of this application be provided for.
2. The Applicant states that the Colonial Government alienated the suit properties to the East African Posts and Telecommunications Corporation and Kenya External Telecommunications Limited for its use. After the dissolution of the East African Community, the Government of Kenya through the Minister of Finance vested several properties including the suit properties to Kenya Posts and Telecommunications Corporation.
3. The *Kenya Information and Communications Act* No 2 of 1998 repealed the Kenya Posts and Telecommunications Act. Following the repeal of Kenya Posts and Telecommunication Act, three entities were created to take over its roles. These were Telkom Kenya Limited, Postal Corporation of Kenya and the Communications Commission of Kenya.
4. At its disbursement, Kenya Posts and Telecommunications Corporation owed huge liabilities to its employees and former employees who were entitled to their pension. Consequently, the Applicant was registered as a pension Scheme by Kenya Posts and Telecommunications Corporation to provide pension and other retirement benefits to current and former employees of Kenya Posts and Telecommunications Corporation.
5. Pursuant to the Provisions of the *Kenya Information and Communications Act*, and in part Settlement of the accrued liabilities, the Government through the Minister of Finance through legal notice number 154 of November 5, 1999 vested several properties including the suit properties to the Applicant's trustees to enable it to discharge liabilities which had accrued to any person who was liable to receive pension as at June 30, 1999 and the employees of Telkom Kenya Limited, Postal Corporation of Kenya and the Communication Commission of Kenya.
6. Subsequent to the vesting order, the Applicant processed titles over Eldoret Municipality Block 14/180 and 184. In 2019, the Applicant's officials discovered that the Respondents had encroached into the two suit properties and had erected structures thereon in circumstances which were irregular and improper. On October 2, 2019 the Applicant moved to register restriction over the title to protect its interests. It is on this basis that the Applicant seeks an injunction to prevent further construction on the suit properties.
7. The 1<sup>st</sup> Respondent opposed the Applicant's application based on a replying affidavit sworn on April 20, 2022. The 1<sup>st</sup> Respondent contends that his brother Onyango Agai purchased Eldoret Municipality Block 14/184 from the Trustees of the Applicant on February 10, 2005. The 1<sup>st</sup> Respondent's brother has since died out of shooting by cartels out to take the land.
8. The 1<sup>st</sup> Respondent further contends that he has been on the land for over 18 years without any interruption and that he has since acquired it by way of prescription. He argues that an injunction cannot issue against a party who is in possession of the suit in respect of which an injunction is sought.
9. The 2<sup>nd</sup> and 4<sup>th</sup> Respondents opposed the Applicant's application based on a replying affidavit sworn on July 5, 2022. They contend that the 2<sup>nd</sup> Respondent purchased Eldoret Municipality Block 14/180 from Joshua Obonyo Aywa and Wilfred Kipngetich Chebochok who were the registered owners of the land. They argue that the Applicant cannot claim to own the suit property through a vesting order by the Government yet in its own documents, the property was once leased to the Great Rift Transporters (Kenya) Limited.



10. The 2<sup>nd</sup> and 4<sup>th</sup> Respondents further contend that a mandatory injunction cannot be given at interlocutory stage when it is not clear how the Applicant obtained its title.
11. The 3<sup>rd</sup> Respondent opposed the Applicant's application based on a replying affidavit sworn on June 9, 2022. The 3<sup>rd</sup> Respondent states that she purchased the property from the 2<sup>nd</sup> Respondent on September 29, 2021 and that she took immediate possession and has since put up rental houses which have tenants.
12. The parties were directed to file written submission. The Applicant filed submissions on September 1, 2022. The 1<sup>st</sup> Respondent filed submissions on June 27, 2022. The 3<sup>rd</sup> Respondent filed submissions on October 29, 2022. The 2<sup>nd</sup> and 4<sup>th</sup> Respondents filed their submissions on October 28, 2022. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties.
13. There are two issues which emerge for determination. The first is whether the Applicant has demonstrated that it has a prima facie case to warrant issuance of an injunction. The second is whether a mandatory injunction can issue at interlocutory stage.
14. The principles for grant of an injunction were set out in the celebrated case of *Giella –vs' Cassman Brown and Co' Ltd (1973) EA 358*.  

' Firstly, an Applicant must show a prima facie case with probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.'
15. In the case of *Mrao Ltd – Vs- American Bank of Kenya Ltd & 2 others (2003) KLR 125*, a prima facie case was defined as follows: -  

' In 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 property directing itself will conclude there exists a right which has apparently been infringed by the opposite party as t call for an explanation or rebuttal from the latter.'
16. In the case of *Nguruman Limited –Vs- Jan Bonde Nielson & 2 others (2014) eKLR* the Court of Appeal stated as follows: -  

' The requirement to be met before granting of interlocutory injunction are three; the applicant has to show the three requirements;

  - a. Establish his case only at a prima facie level,
  - b. Demonstrate irreparable injury if a temporary injunction s not granted, and,
  - c. Ally any doubts as to by showing that the balance of convenience is in his favour.'
17. I have perused the materials placed before me. There is no doubt that the Applicant has titles in respect of the two suit properties. The 2<sup>nd</sup> Respondent derived his ownership of one of the properties from two individuals who had a title over the same property. The 1<sup>st</sup> Respondent is on the Property based on a sale of the same to his deceased brother who is said to have purchased the same from the trustees of the Applicant.



18. I am aware that in determining whether the Applicant has demonstrated that it has a prima facie case, I am not expected to interrogate the documents in great detail as though I was conducting a mini trial. I am not also expected to make final conclusions as to the respective parties cases.
19. The Applicant did not make any comment regarding the agreement exhibited by the 1<sup>st</sup> Respondent in form of a further affidavit. There was equally no comment on the title which was held by Joshua Obonyo Aywa and Wilfred Kipngetich Chebochok.
20. The Applicant discovered that there were intruders on the two properties in 2019. They did not move to court until 2022, almost two years later. The 1<sup>st</sup> Respondent alleges to have been in possession since 2005. The 3<sup>rd</sup> Respondent came into the suit property in 2021.
21. The Applicant's photographs show some construction which is at initial stages. There is no evidence of any completed house which is being occupied by the tenants as alleged by the 3<sup>rd</sup> Respondent. It is not clear how the lessee is Great Rift Transporters Limited yet the title is granted to the Applicant. It is not clear whether the Great Rift Transporters Limited was associated to the defunct Kenya Posts and Telecommunication Corporation.
22. The position which has been established by precedents is that where there are serious disputed facts, the best option for the court is to order that the status quo be maintained pending completion of the case.
23. On the issue of a mandatory injunction at interlocutory stage, the case of *Kenya Breweries Ltd – Vs- Washington Okeyo (2002) eKLR* stated the circumstances under which a mandatory injunction can be given at interlocutory stage as follows: -

' A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally, be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is simple and summary one which can be easily remedied, or if the Defendant attempts to steal a march on the Plaintiff, a mandatory injunction will be granted on an interlocutory application.'
24. This is not a simple and straight forward case where a mandatory injunction can be given. There is need to interrogate the title which was held by Joshua Obonyo Aywa and Wilfred Kipngetich Chebochok as well as the agreement between Bernard Onyango Agai and the Trustees of the Applicant. A mandatory injunction cannot therefore be granted at interlocutory stage.
25. In sum thereof, I direct that the status quo be maintained pending the hearing and determination of this suit. For avoidance of doubt, the status quo to be maintained is the status obtaining as at the time of delivery of this ruling. There should be no further constructions on both parcels. The costs of this application shall abide the outcome of the main suit.
26. 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. Munyiva for the Plaintiff.

Court Assistant –Laban

