



**Kuria v Haji & 3 others (Environment & Land Case E6 of 2022)
[2023] KEELC 17008 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17008 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E6 OF 2022**

**LA OMOLLO, J
APRIL 20, 2023**

BETWEEN

SAMUEL NDICHU KURIA APPLICANT

AND

NOORDIN MOHAMMED HAJI 1ST RESPONDENT

MONAZ COMPANY LIMITED 2ND RESPONDENT

CHIEF LAND REGISTRAR 3RD RESPONDENT

BENJAMIN KIPKECH KIPKULEI 4TH RESPONDENT

RULING

1. This ruling is in respect of the Applicant’s Notice of Motion application dated 22nd April, 2022. The said application is expressed to be brought under Section 3A of the *Civil Procedure Act*, Order 5 Rule 17, Order 40, rules 1, 2, 3, 4 & 8 and Order 51, Rule 1 of the Civil Procedure Rules.
2. The application is filed under Certificate of Urgency and seeks the following orders;
 - i. Spent
 - ii. Spent
 - iii. Pending the inter partes hearing and determination of the Originating Summons filed herein, an order of injunction be and is hereby issued (sic) restraining the respondents whether by themselves, agents or servants from invading, remaining upon, alienating, occupying, disposing of, transferring, evicting the Applicant, interfering with the Applicant’s peaceful occupation and/or in any manner whatsoever dealing with all that parcels of land known as LR No. 20591/20 and LR No. 20591/21 both situated in Ndabibi – Naivasha within Nakuru County.



- iv. Spent
 - v. The costs of this application be provided for.
3. The application is based on the grounds on its face and supported by the affidavit sworn by the Applicant, Samuel Ndichu Kuria, on 22nd April, 2022.

Factual Background.

4. This suit was instituted vide Originating Summons dated 22nd April, 2022. The Applicant seeks the following orders;
- a. The Applicant has obtained title over land parcel No. LR No. 20591/20 and parcel No. LR No. 20591/21 both situated in Ndabibi-Naivasha within Nakuru County (the suit properties) by way of adverse possession having occupied the said suit properties in an exclusive, open, continuous and uninterrupted manner for a period of over twelve (12) years since 2000.
 - b. The 1st Respondent's title over parcel of land known as LR No. 20591/20 situated in Ndabibi – Naivasha within Nakuru County has been extinguished by operation of law.
 - c. The 2nd Respondent's title over parcel of land known as LR No. 20591/21 situated in Ndabibi -Naivasha within Nakuru County has been extinguished by operation of law.
 - d. The Applicant be registered as the absolute and indefeasible proprietor of the parcels of land known as LR No. 20591/20 and LR No. 20591/21 both situated in Ndabibi – Naivasha within Nakuru County.
 - e. The Chief Land Registrar, the 3rd Respondent herein do register the Applicant as the proprietor of the land parcels known as LR No. 20591/20 and LR No. 20591/21 both situated in Ndabibi – Naivasha within Nakuru County, in place of the 1st and 2nd Respondents respectively within fourteen (14) days of the judgement, order or decree herein.
 - f. Costs of the suit be borne by the Respondents.
5. The 4th Respondent filed a Replying Affidavit sworn on 12th October, 2022 in response to both the Notice of Motion and Originating Summons.
6. The application under consideration first come up for hearing on 25th April, 2022 when the court directed that it be served upon all the Respondents.
7. The application came up severally for hearing but did not proceed because the Respondents had not been served. This court issued orders of status quo on 27th July, 2022.
8. In the intervening period, the Applicant sought and was granted leave to serve the 1st and 2nd Respondent by way of substituted service. The 1st and 2nd Respondent neither entered appearance nor responded to this application.
9. The 3rd Respondent was served, entered appearance but did not respond to the application.
10. On 22nd September, 2022 the application was scheduled for hearing. It was to be heard on 12th October, 2022 and the 4th Respondent was given time to file a response.
11. After several subsequent mentions, the court finally issued directions on 15th November, 2022. The directions were that the application would be heard by way of written submissions.



12. On 6th December, 2022, parties confirmed having filed submissions and the application was reserved for ruling.

Applicant's Contention.

13. The Applicant deposes that the parcels of land known as L.R No. 20591/20 and L.R No. 20591/21 are both situated in Ndabibi —Naivasha in Nakuru County within the jurisdiction of this Honourable Court.
14. The Applicant also deposes that land parcel No. L.R No. 20591/20 is registered in the name of Noordin Mohammed Haji (the 1st Respondent herein) according to the records held by the 3rd Respondent and as demonstrated by the Certificate of Title and official search issued on the 21st April, 2022.
15. The Applicant further deposes that land parcel No. L.R No. 20591/21 is registered in the name of Monaz Company Limited, the 2nd Respondent herein according to the records held by the 3rd Respondent and as demonstrated by the Certificate of Title and official search issued on the 21st April, 2022.
16. He contends that sometime in September 2000, he entered the suit properties which were by then bushy and idle, cleared them and initiated agricultural and livestock farming activities without the consent of the 1st and 2nd Respondents and/or their agents.
17. He further contends that since the year 2000, he has been in exclusive, open, continuous and uninterrupted possession and use of the suit properties wherein he undertakes agricultural activities that mainly includes maize farming.
18. He deposes that he rears a number of livestock with the help of his servants and agents who reside on the suit properties.
19. He further deposes that he has put up structures and dwelling units to accommodate his servants and their families most of whom have known the suit properties as their only home and source of livelihood.
20. He also deposes that the 1st and 2nd Respondents and their agents have had knowledge of his occupation and possession of the said suit properties but have never made any efforts to evict him and his agents/licenseses for over two decades since he took occupation thereof and initiated farming activities until recently when the 1st and 2nd Respondents tried to evict him forcefully.
21. He deposes that the local administration including the successive Assistant Chiefs and Chiefs in the Ndabibi area in Naivasha have been aware of his occupation and use of the suit properties since the year 2000 when he first occupied the same and cleared the bushes/thickets.
22. He also deposes that in view of his uninterrupted occupation of the suit properties for over two decades, the 1st and 2nd Respondents' titles over the suit properties have been extinguished by operation of law.
23. He further deposes that his servants have known the suit properties as their only home and source of livelihood for over two decades and thus they stand to suffer great prejudice due to the imminent illegal eviction by persons purporting to be acting at the behest of the 1st and 2nd Respondents.
24. He contends that unless the Court intervenes and grants prayers as sought herein or at the very least orders the maintenance of the prevailing status quo as to occupation



pending the determination of these proceedings, he will be deprived of ownership of the suit land contrary to the law and the substratum of these proceedings destroyed.

25. He ends his deposition by stating that it is fair and just that the orders sought be granted.

4th Respondent's Response.

26. In response to the application, the 4th Respondent filed a Replying Affidavit and Counterclaim sworn on 12th October, 2022.

27. He deposes that the Applicant's Application is an attempt to legitimise unlawful acts of trespass against him, by prosecuting a claim for adverse possession against persons who despite being the registered owners have sold their interests in the property.

28. He also deposes that contrary to the averments in paragraph 6 of the Supporting Affidavit and grounds 1,2, and 3 of the Originating Summons, he is the beneficial owner of LR. No. 20591/20 and LR. No. 20591/21 adjoining his other properties which are in issue in ELC 34 of 2021, ELC E35 of 2021, ELC E43 of 2022, ELC E12 of 2022 and ELC 34 of 2022 having acquired the same from the year 2000.

29. He further deposes that he has been in peaceful possession and occupation of LR. 20591/20 and LR. 20571/21 together with other lands adjoining the property since acquisition in the year 2000 until the year 2021 when Applicant and other fraudsters commenced the invasion of the said properties in a systematic but coordinated manner.

30. He deposes that he initially filed an application for injunction in ELC E12 of 2022, wherein these two properties were in issue, and the court upon the Applicant's application for joinder gave him the option of joinder wherein he elected to proceed with pursuing his rights and interest in this suit.

31. He also deposes that in the year 2006, in readiness for registration of his interest they obtained the Land Control board consent for purposes of effecting the transfer but the registration was not completed.

32. He further deposes that he acquired the suit properties more than 20 years ago and has been practicing mixed farming where he does crop rotation leaving certain portions fallow for his animals and his neighbours' animals to graze.

33. He deposes that he put up his workers houses on the properties where they reside with their families and that the averments in ground 4 of the Originating Summons and paragraphs 7 and 8 are fictitious as no evidence has been tendered showing the Applicant's farming activities for the past 20 years.

34. He also deposes that in the year 2021, a group of invaders acting with common intent with the Applicant commenced trespass over his properties resulting in various litigation.

35. He further deposes that contrary to the averments in paragraph 9, 10, 11 and 12 of the supporting Affidavit, the Applicant forcefully entered his parcels and demolished his workers house in order to hoodwink the court that he has been in possession for the past 20 years and is now citing illegal acts as justification for legal protection.

36. He deposes that his farm manager stopped them and went to report the matter to Kongoni Police Station but by the time he came back they had completely brought down the entire structure.

37. He also deposes that the Applicant thereafter trespassed onto his other adjoining parcels of land being LR. 20591/38 and LR 20591/39 which are in issue in ELC E34 of 2022 and ELC 41 of 2022 adding that the Appellant lodged a fictitious criminal claim against his farm manager and worker.



38. He further deposes that the Applicant abused the status quo orders issued on the 27th July, 2022 and extended on the 22nd September, 2022 by further demolishing his workers house.
39. He contends that contrary to the averments in grounds 5, 6 7, 8 and 9 of the Originating Summons and paragraphs 13, 14 and 15 of the Supporting Affidavit, the Plaintiff was not in the property prior to the year 2022. That he stays in a house legally built during the pendency of a suit in his other property LR 2059 1/40 which is in issue in of ELC 34 of 2022.
40. He also contends that it is actually his family, servants and licensees that have been in occupation of the suit properties for over two decades and will stand to suffer great prejudice by the claim of adverse possession by the Applicant.
41. He deposes that the Applicant's acts of trespass have exposed him to substantial loss which if allowed to persist may render him bankrupt as his source of livelihood is through farming and his losses at the moment are collectively at over 2000 acres of land.
42. He also deposes that should the court grant an injunction, he stands to suffer prejudice as his right to own property will be infringed at the hand of a fraudster and the court will have entrenched a system of anarchy, perjury and deceit.
43. He further deposes that the claim for adverse possession is just a new tactic after the Applicant produced dubious ownership documents in the other suits and it has now become apparent that they cannot legitimately challenge his ownership.
44. He deposes that it is in the interest of justice that the suit herein does proceed against the real Respondent who is not the 1st or the 2nd Respondent who no longer have any legal interest in the suit other than transferring the properties to him.
45. He ends his deposition by stating that he is advised by his advocates on record that the issues in dispute in this suit are too complex to be tried by a summary procedure and therefore the affidavits in this suit should be converted to stand as pleadings and the suit be deemed to have been commenced by a Plaintiff and in the interest of justice, the Applicant's application be dismissed.

Applicant's Response To The 4th Respondent's Replying Affidavit.

46. In response to the 4th Respondent's Replying Affidavit, the Applicant filed a Supplementary Affidavit sworn on 25th October, 2022.
47. He reiterates that the two parcels of land in dispute in this matter are LR No. 20591/20 registered in the name of Noordin Mohammed Haji and LR No. 20591/21 registered in the name of an entity known as Monaz Company Limited the 2nd Respondent herein.
48. He deposes that the 4th Respondent is not registered as a proprietor of any of the suit properties herein and so he lacks the capacity to oppose the application dated 22nd April, 2022.
49. He further deposes that he is advised by his advocates on record that pursuant to Section 3(3) of the Law of Contract Act, Cap 23, no suit based on a contract of disposition of an interest in land can be entertained unless the contract is in writing and has been executed by the parties.
50. He deposes that the 4th Respondent has not exhibited any agreement for sale and therefore his contention that he has beneficial interest over the suit properties is incorrect.
51. He also deposes that the suit properties adjacent to the suit properties are LR No. 20591/40, 41, 42, 78, 16 and 79 among other parcels which the 4th Respondent is claiming vide Nakuru ELC Case No.



- 34 of 2021, 35 of 2021, 43 of 2021, 12 of 2022 and 41 of 2022 against other persons who are not parties to the present suit.
52. He further deposes that in all the above suits, the 4th Respondent alleged that he was in occupation of all the said parcels in question which allegation turned out to be false.
 53. He deposes that he has resided on the suit properties since September 2000 to date and that the 4th Respondent has never been in occupation of the suit properties.
 54. He also deposes that he is informed by his advocates on record that in the proceedings in Nakuru ELC Cases No. 34, 35 and 43 of 2021, the Deputy Registrar of the Court conducted a site visit on the properties therein to ascertain whether the 4th Respondent was in occupation and that the site visit reports showed that he was not in occupation.
 55. He further deposes that in the mentioned matters, the court has issued orders of injunction restraining him from interfering with the people in occupation of the said properties until the cases are heard and determined.
 56. It is his contention that the Land Control Board Consent dated 6th February, 2006 in relation to land parcel No. LR No. 20591/20 has no effect in the present proceedings as it is not dated and is not supported by an agreement of sale.
 57. He contends that the 4th Respondent also relies on a letter of Consent dated 6th February, 2006 and issued on the same date which is in respect of LR No. 20591/25 which is not the suit properties herein.
 58. He deposes that his occupation of the suit properties has been uninterrupted, open, peaceful and continuous and he has cultivated different types of crops that include maize, beans and wheat.
 59. He also deposes that he has been rearing different types of animals including goats, sheep and cows on the suit properties which continue to graze on it.
 60. He further deposes that he has instituted these proceedings seeking an order that the court declares him as the owner of the suit properties and that he does not share a common intention with the other trespassers as alleged by the 4th Respondent in his replying affidavit.
 61. He deposes that he has not destroyed any house or structure belonging to the 4th Respondent and to the contrary, it is the 4th Respondent who has invaded other people's properties in Ndabibi area in Naivasha.
 62. He also deposes that between 23rd June, 2022 and 3rd July, 2022, the 4th Respondent instructed his agents namely Robert Kiptalam Miningwa and Charles Kibet who invaded the suit properties and destroyed the houses erected thereon.
 63. He further deposes that he reported the invasion and destruction that was committed by the 4th Respondent's agents to the police and the agents were arrested and charged with malicious damage to property.
 64. It is his deposition that he stands to suffer great prejudice if the court does not grant an order for injunction as he has produced photographs as evidence of possession which photographs show houses constructed on the suit properties.
 65. He ends his deposition by stating that he stands to suffer irreparable loss and damage if the Respondents evict him from the suit properties.



Issues For Determination.

66. The Applicant filed his submissions on 28th November, 2022 while the 4th Respondent filed his submissions on 9th December, 2022.
67. The Applicant in his submissions seeks to answer the question whether he has a prima facie case with a probability of success. He relies on the case of Mrao Limited Vs First American Bank of Kenya & 2 Others [2003] eKLR and submits that in his Originating summons, he has demonstrated that he has been occupation of the suit properties since the year 2000 and prays that he be declared to have acquired the suit properties by way of adverse possession.
68. He further submits that the registered owners of the suit properties who are the 1st and 2nd Respondent have not entered appearance and since he has demonstrated occupation through the pictures annexed to his supporting affidavit, he is entitled to the orders sought.
69. The Applicant reiterates the contents of his Supplementary Affidavit and submits that it is only the 4th Respondent who is opposing the issuance of the orders sought on the ground that he purchased the suit properties from the 1st and 2nd Respondents but has not exhibited any sale agreement which violates the provisions of Section 3(3) of the Law of Contract Act.
70. The Applicant cites the decisions in B2 Yatta Ranching Co-operative Society Ltd Vs County Council of Kitui & 12 Others [2020] eKLR, Priscillah Wanja Kibui Vs James Kiongo Kibui & another [2014] eKLR, Veswa Odunga Okumu v Nicholas Egesa Mayia [2020] eKLR and submits he is in occupation of the suit properties while the 4th Respondent is not and he has therefore demonstrated a prima facie case with high chances of success.
71. The Applicant further submits that he has lived peacefully on the suit properties until June and July, 2022 which was after filing of the present suit that the 4th Respondent instructed goons to interfere with his continued occupation.
72. The Applicant relies on the cases of Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Limited & 2 Others [2016] eKLR, Banis Africa Ventures Limited vs National Land Commission [2021] eKLR and submits that unless the court grants an order of injunction, he will be dispossessed of the suit properties and be rendered destitute.
73. The Applicant further submits that it is not disputed that the 4th Respondent's employees were charged with the offence of malicious damage to property and stealing from the Applicant in Naivasha Chief Magistrate's Court Criminal Case No. E909 of 2022, Republic Vs Robert Kiptalam Miningwa and Charles Kibet and he therefore reiterates that the court should grant an order of injunction in order to preserve the suit properties.
74. The Applicant reiterates that the balance of convenience tilts in his favor and relies on the case of Paul Gitonga Wanjau Vs Gathuthi Tea Factory Company Ltd & 2 Others [2016] in support of his arguments and ends his submissions by seeking that his application be allowed as prayed.
75. The 4th Respondent in his submissions identify the following issues for determination;
 - a. Whether the plaintiff has demonstrated a genuine case worthy of a status quo placing him in possession pending the hearing and determination of his claim of adverse possession.
 - b. If the Plaintiff has failed in demonstrating a genuine case what order should the court issue?



76. The 4th Respondent relies on Order 40(1)(a) & (b) of the Civil Procedure Rules and the case of *Giella Vs Cassman Brown & Company Limited* [1973] EA 358 and submits that the Applicant has to establish that he has a prima facie case, demonstrate irreparable injury if a temporary injunction is not granted and that the balance of convenience tilts in his favor.
77. On whether the Applicant has demonstrated a prima facie case, the 4th Respondent relies on the case of *Nguruman Limited Vs Jan Bonde Nielson & 2 Others* [2014] eKLR and submits that he acquired the suit properties in the year 2000 and he is opposing the injunction orders as he is the rightful owner.
78. The 4th Respondent also submits that that the Applicant has not produced any proof of occupation of the suit properties and has instead produced images of the structures that belong to him.
79. He also submits that he has produced copies of the title and the land control board consents issued in the year 2006 and that even though the Applicant alleges that there is no written land sale agreement, the law at the time allowed for oral contracts for sale of land.
80. The 4th Respondent submits that the Applicant has not demonstrated a prima facie case and that he is the one suffering irreparable loss as he can no longer continue with the farming activities which are the source of his livelihood.
81. On the second issue, the 4th Respondent submits that at this stage it is difficult to establish the actual status quo on the suit properties through affidavit evidence because whereas the Applicant claims possession, he asserts that the said possession claimed is unlawful and illegal.
82. The 4th Respondent also submits that if the court is convinced that the Applicant has established a prima facie case, then an award of damages would be sufficient to compensate the Applicant for any loss.
83. The 4th Respondent concludes his submissions by seeking that the application dated 22nd April, 2022 be dismissed with costs.

Analysis And Determination.

84. I have considered the application, the affidavit in support of the application, the replying and supplementary affidavits and the rival submissions filed.
85. The single issue that arises for determination is whether the Applicant has met the criteria for grant of orders of temporary injunction pending the hearing and determination of this suit.
86. The guiding principles for the grant of orders of temporary injunction are set out in the case of *Giella Vs Cassman Brown* (1973) EA 358 and restated in the case of *Nguruman Limited Vs Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal Stated as follows;

“in an interlocutory injunction application, the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour. These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the Applicant is expected to surmount sequentially”.



87. The Court of Appeal in the case of Mrao Ltd Vs First American Bank of Kenya Ltd [2003] eKLR stated as follows on what constitutes a prima facie case;

“... 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.”

88. In support of his application, the Applicant has attached certificates of title for LR No. 20591/20 registered in the name of Noordin Mohammed Haji and LR No. 20591/21 registered in the name of Monaz Company Limited. He has also annexed pictures which he states show that he has been in occupation. The said pictures are in black and white, not clear and undated.

89. The Applicant alleges that he has been in occupation of the suit properties since the year 2000 and has developed the same until sometime in the year 2022 when the agents of the 4th Respondent tried to evict him.

90. The 4th Respondent, on the other hand, also alleges that he has been in possession of the suit properties since the year 2000 after he purchased them from the 1st and 2nd Respondents.

91. The 4th Respondent further alleges that in the year 2021 a group of invaders that included the Applicant trespassed on the suit properties and demolished his houses.

92. The 4th Respondent also alleges that the photographs annexed to the Applicant's application are actually photographs of his houses that were destroyed by the Applicant and the other invaders.

93. In support of his claim he has annexed copies of the Land Control Board consents dated 6th February, 2006 for LR No. 20591/20 and LR No. 20591/25 among other documents.

94. In this matter, both the Applicant and the 4th Respondent are alleging to be in occupation of the suit properties. They are both claiming that the photographs annexed to their respective affidavits are of the suit properties and depict that they are in occupation.

95. In essence, both the Applicant and the 4th Respondents have made valid, not necessarily accurate, arguments in favour of and against the issuance of orders of temporary injunction.

96. In the circumstances, I find that this is a fit case for the grant of orders of status quo as provided in Direction 28 (k) of the Environment and Land court Practice Directions.

97. The Court in the case of TSS Spinning & Weaving; Company Ltd Vs Nic Bank Limited & another [2020] eKLR stated as follows on the purpose of orders of status quo;

“In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention.”

98. Further the court in the case of Kenya Airline Pilots Association (KALPA) Vs Co-operative Bank of Kenya Limited & another [2020] eKLR stated as follows;

...By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed



or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

99. The court in the case of Thugi River Estate Limited & another Vs National Bank of Kenya Limited & 3 others [2015] eKLR held as follows;

.... Ordinarily where it is the court that has prompted a status quo order or has prompted the parties to it, it is more appropriate and exceedingly relevant to describe clearly the state of affairs at the time the order for status quo is issued. It is undesirable to simply make an order of status quo to be maintained without clearly describing the state of affairs then existing and being preserved. Assistance of the counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind.”

Disposition.

100. In the result, this court hereby issues orders as follows;

- a. The status quo obtaining as at the date of this ruling shall be maintained.
- b. In order to ascertain the status quo, should it be in doubt, parties herein shall within 30 days of this ruling move the court to arrange a site visit.
- c. The cost of this application shall abide the outcome of this suit.

101. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 20TH DAY OF APRIL, 2023.

L. A. OMOLLO

JUDGE

In the presence of: -

Mr. Otinga for the Applicant.

No appearance for the 1st and 2nd Respondent.

No appearance for the 3rd Respondent.

Mr. Odhiambo for the 4th Respondent.

Court Assistant; Ms. Monica Wanjohi.

