



**Ethics and Anti-Corruption Commission v Leiyagu & 2 others; Macharia (Interested Party)
(Environment & Land Case E002 of 2023) [2023] KEELC 17683 (KLR) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17683 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE E002 OF 2023**

AK BOR, J

MAY 29, 2023

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

PAMELA N. LEIYAGU 1ST DEFENDANT

RICHARD N. LEIYAGU 2ND DEFENDANT

SAMMY KOMEN MWAITA 3RD DEFENDANT

AND

NICHOLAS MACHARIA INTERESTED PARTY

RULING

1. The plaintiff filed the application dated 27/2/2023 which mainly seeks to restrain the 1st and 2nd defendants from dealing with the land known as Nanyuki Municipality Block 8/860 by selling, transferring, mortgaging, developing, leasing or collecting rent from that property pending hearing and determination of the application and the suit. It also seeks to have the interested party directed to deposit the monthly rent of Kshs. 20,000/= in court pending hearing and determination of the suit.
2. Simeon Lei, an investigator and employee of the plaintiff deployed to the plaintiff's Nyeri Regional office swore the affidavit in support of the application. He averred that he was a member of the team which investigated the subject matter of this suit based on the allegations that it was irregularly or unlawfully alienated. The Plaintiff received complains that the suit property constituted public land which was unlawfully alienated to the 1st and 2nd Defendants, and who leased the suit premises to the interested party. He produced copies of the documents retrieved from the investigations conducted on the land, which also show that there is a government house erected on the suit property identified



- as MG8. He also attached statements from the County Director of Housing and the tenant's bank statements confirming the rent he pays.
3. The Plaintiff contends that the offer for sale of the government house was nullified and the defendants were notified of the nullification. That despite the nullification, the defendants went ahead to obtain a certificate of lease over the suit property. The plaintiff maintains that neither the President nor the Commissioner of Lands had power under the [Government Lands Act](#) to alienate government land in the manner done by the 3rd defendant.
 4. The 1st and 2nd defendants swore the affidavit in opposition to the application, in which they deponed that they are husband and wife and were the legal owners of the suit property. They averred that their ownership of the land is protected by sections 24, 25 and 26 of the [Land Registration Act](#). They claimed that another application was pending before the court in Nairobi and hence this was suit was sub judice. They averred that the Plaintiff had concealed material facts and was not entitled to the order sought. They added that the application was defective based on the disparity of dates with the application reading 27/2/2023 while the supporting affidavit was sworn on 1/3/2023.
 5. The defendants contended that the plaintiff had not satisfied the prerequisites for the grant of a temporary injunction and urged the court to dismiss the application. They maintained that under the repealed [Government Lands Act](#), the Commissioner of Lands had power to alienate and allocate government land and issue a lease to private individuals like themselves. They attached documents showing how they acquired the land based on the Government's decision to sell non-strategic government houses. They maintained that the land was alienated and registered in their names lawfully prior to 2010 and that no statute should be applied retrospectively against them. They relied on various correspondence exchanged by different government entities touching on the suit property.
 6. Parties filed submissions which the court has considered. The Plaintiff submitted that it was not in dispute that the suit property was previously government land on which government house no. MG8 belonging to the state department of housing stands. It urged that the contention was whether the 3rd defendant had power to alienate government land and even if he had such power; whether sections 12 and 13 of the repealed [Government Lands Act](#) was complied with in the alienation of the suit property to 1st and 2nd defendants. The plaintiff relied on various decisions on the conditions to be met before a temporary injunction can be issued by the court. It submitted that it had established a prima facie case and that the public at large may suffer irreparable injury if the 1st and 2nd defendants deal with the suit property in a manner that may hamper its recovery by the plaintiff for it to revert to the public for use for the purpose for which it was reserved.
 7. The 1st and 2nd defendants submitted that the plaintiff had failed to establish a prima facie case since they enjoy the protection of the law under sections 24, 25 and 26 of the [Land Registration Act](#). They urged that granting the reliefs sought by the plaintiff would be prejudicial to them and run contrary to articles 27 (1) and 50 of [the Constitution](#) on the right to a fair hearing. They also relied on section 116 of the [Evidence Act](#) and urged that it is only at the full trial when a determination on ownership of the suit land can be made. On whether irreparable injury would result if an order of injunction is not granted, the 1st and 2nd defendants contended that the 1st defendant transferred the suit property to the 2nd defendant on grounds of love and affection and that they have enjoyed the suit property since 2008 without any intention of selling it. They indicated that they would not mind if the order for status quo granted on 14/3/2023 was maintained until the suit is determined if the court were to give a near date for hearing of the suit. They urged that the application lacked merit while undertaking not to sell the suit property.



8. Having considered the application, the replying affidavit and the submissions of counsel, the court is minded to grant an order restraining dealings with the suit property pending hearing and determination of the suit. Parties are directed to comply with order 11 of the *Civil Procedure Rules* with a view to setting down the suit for hearing expeditiously so that a determination can be on the issue of ownership made by the court. The costs of the application will be in the cause.

DELIVERED VIRTUALLY AT NANYUKI THIS 29TH DAY OF MAY 2023.

K. BOR

JUDGE

In the presence of:

Mr. Benson Kyeli for the Plaintiff

Mr. J. Okemwa holding brief for Mr. J. Abwuor for the 1st and 2nd Defendants

Ms. Stella Gakii – Court Assistant

No appearance for the 3rd Defendant and the Interested Party

