



REPUBLIC OF KENYA



**KENYA LAW**  
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**Century Life Investments Limited v Ali (Being Sued as the Chairman of Kaloleni Welfare Society) & another (Environment & Land Case E072 of 2022) [2023] KEELC 18384 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18384 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E072 OF 2022**

**CA OCHIENG, J**

**JUNE 29, 2023**

**BETWEEN**

**CENTURY LIFE INVESTMENTS LIMITED ..... PLAINTIFF**

**AND**

**ALI ABDI ALI (BEING SUED AS THE CHAIRMAN OF KALOLENI WELFARE SOCIETY) ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiff's Notice of Motion Application dated the 30<sup>th</sup> September, 2022 where it seeks the following orders:
  1. Spent
  2. Spent
  3. That an order of injunction be issued against the Defendants to restrain them jointly and severally whether by themselves, servants, agents, employees and or officers, from entering, trespassing, taking possession, wasting, damaging, transferring to any third party or in any way interfering with the Plaintiff's quiet possession of all that Land Reference No. 25194 IR No. 84873 including the entire improvements within the said property pending hearing and determination of this suit.
  4. That the Officer Commanding Mlolongo Police Station to ensure compliance with the orders of this Court.
  5. That costs of this Application be provided for.



2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Trophimus Kiplimo where he deposes that the Plaintiff is the bona fide proprietor of Land Reference No. 25194 IR No. 84873 hereinafter referred to as the 'suit land'. He contends that the Plaintiff acquired the Certificate of Title to the suit land on 20<sup>th</sup> November, 2000 and has been in peaceful occupation of the said land since then, to date. He explains that the Plaintiff has been utilizing the suit land for a long time as a training ground for its security guards including that of its sister company, 911 Group Limited. He claims on 22<sup>nd</sup> September, 2022 the Plaintiff received reports that unknown persons had entered the suit land and attacked its agents based thereon. Further, the said persons confirmed they had been instructed by the 1<sup>st</sup> Defendant herein with intention to unlawfully evict the Plaintiff from the suit land, which matter was reported to the Director of Criminal Investigations. He states that the Plaintiff is unaware of the entity known as Kaloleni Welfare Society and is not privy to their alleged entitlement to the suit land. Further, that when the attacks persisted, the Plaintiff wrote a letter to the 1<sup>st</sup> Defendant but received no response. He argues that the Plaintiff has demonstrated a *prima facie case* as there exists a real danger that the Defendant or its agents will proceed to disturb the Plaintiff's peaceful occupation of the suit land.
3. The 1<sup>st</sup> Defendant opposed the instant Application by filing Grounds of Opposition. It contends that the Application is frivolous and vexatious in that the suit land is already being litigated over in ELC No. 113 of 2019. Further, that the Application will delay the fair trial of the action and is a waste of the court's time, an abuse of the court process as well as bad in law.
4. The 2<sup>nd</sup> Defendant opted not to participate in the instant Application.
5. The Application was canvassed by way of written submissions but I note it is only the Plaintiff that filed its submissions.

### **Analysis and Determination**

6. Upon consideration of the instant Notice of Motion Application including the Supporting Affidavit, annexures and submissions, the only issue for determination is whether the Plaintiff is entitled to orders of interlocutory injunction restraining the Defendants from interfering with the suit land pending the outcome of the suit.
7. The Plaintiff in its submissions reiterates its averments as per the Supporting Affidavit and contends that it had established a *prima facie case* to warrant the orders sought. It argues that none of the Defendants filed their responses to controvert its averments. Further, that the Grounds of Opposition filed by the 1<sup>st</sup> Defendant did not challenge the authenticity of its title. It further submitted that it will suffer irreparable loss and damage since it had to stop the training of the guards on the suit land as a result of the attacks. Further, that a violation of a fundamental right cannot be equated to compensation by damages. It insists that the suit land is different from the disputed land in ELC No. 113 of 2019 which is Plot No. 31990 IR 198969 To buttress its averments, it relied on the following decisions: *Giella vs. Cassman Brown* (1973) EA 358; *John Muonji Nijamudho v County Government of Nakuru & Another* (2018) eKLR; *Kennedy Otieno Odiyo & 12 Others v Kenya Electricity Generating Company Limited* (2010) eKLR and *Joyce Mutindi Ndili v Mulu Ndili* (2022) eKLR.
8. As to whether the Plaintiff has established a *prima facie case* with a probability of success at the trial, I will rely on the principles established in the case of *Giella Vs Cassman Brown & Company* (1973) EA 358 as well as the definition of a *prima facie case* as stated in the case of *Mrao Ltd vs First American Bank of Kenya & 2 Others* (2003) KLR 125. The Plaintiff claims it is the proprietor of the suit land and annexed a Certificate of Title to that effect. It contends that the 1<sup>st</sup> Defendant including its agents have



trespassed on the suit land and interfered with its peaceful occupation thereon. Further, that they have stopped training security guards on the suit land due to the incessant attacks by the 1<sup>st</sup> Defendant's agents. The 1<sup>st</sup> Defendant in opposing the instant Application filed Grounds of Opposition and its main argument was that there is a pending suit being ELC No. 113 of 2019 where the suit land is also in dispute. I have had a chance to peruse the various annexures herein, I note the Plaintiff is indeed the registered proprietor of the suit land and has demonstrated how it acquired it. The 1<sup>st</sup> Defendant did not file any documents to controvert the authenticity of the Plaintiff's title. Further, I note in ELC No. 113 of 2019 where the 1<sup>st</sup> Defendant is the Plaintiff, it has sued a company called Rhine Forwarders Limited and Sammy Muthusi Further, the suit land therein is Plot LR No. 319900 IR 198969 which is distinct from the suit land herein. Based on these facts, I find that the Plaintiff has indeed established a *prima facie* case to warrant the orders of injunction as sought.

9. As to whether the Plaintiff will suffer irreparable harm which cannot be compensated by way of damages. The Plaintiff claims the 1<sup>st</sup> Defendant including its agents have interfered with its peaceful occupation of the suit land through incessant attacks. It has since stopped training the security guards thereon. In the case of *Nguruman Ltd. vs. Jan Bonde Nielsen & 2 Others* (2014) eKLR, it was held that:

"...the applicant must establish that he 'might otherwise' suffer irreparable injury which cannot be adequately compensated remedied by damages in the absence of an injunction, this is a threshold requirement and the burden is on the applicant to demonstrate, *prima facie*, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot 'adequately' be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy."

10. Based on the facts as presented while relying on the decision cited above, I find that the Plaintiff's alleged injuries are not speculative as it has demonstrated that the Defendants have proceeded to interfere with its peaceful occupation of the suit land. Further, that it continues to suffer irreparable harm which cannot be compensated by way of damages.
11. On the question of balance of convenience, from the evidence presented by the parties, I am not in doubt that the same tilts in favour of the Plaintiff and on the need to preserve the suit land.
12. In the circumstances, I find that the Plaintiff's Notice of Motion Application dated the 30<sup>th</sup> September, 2022 merited and will allow it.
13. I will proceed to make the following orders:
- a. That an order of interlocutory injunction be and is hereby issued against the Defendants, restraining them jointly and severally whether by themselves, servants, agents, employees and or officers, from entering, trespassing, taking possession, wasting, damaging, transferring to any third party or in any way interfering with the Plaintiff's quiet possession of all that Land Reference No. 25194 IR No. 84873 including the entire improvements within the said land pending hearing and determination of this suit.
  - b. That the Officer Commanding Mlolongo Police Station to ensure compliance with the orders of this Court.
  - c. Costs of the Application will be in the cause.



DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 29<sup>TH</sup> DAY OF JUNE,  
2023

CHRISTINE OCHIENG

JUDGE

