



Kanyi v Managing Director, Nawasco & 4 others (Environment and Land Miscellaneous Application E006 of 2023) [2023] KEELC 19233 (KLR) (18 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19233 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E006 OF 2023
AK BOR, J
JULY 18, 2023

BETWEEN

GEORGE KURIA KANYI PLAINTIFF

AND

MANAGING DIRECTOR, NAWASCO 1ST RESPONDENT

JOSEPH NDERITU KERUTHU 2ND RESPONDENT

MARTIN MUGENDI MUGO 3RD RESPONDENT

SIMON KARANJA WAIRIMU 4TH RESPONDENT

SIMON MWANGI 5TH RESPONDENT

RULING

1. The Applicant filed this miscellaneous application on April 12, 2023 seeking an injunction to restrain the Managing Director of the Nanyuki Water and Sanitation Company (NAWASCO) from leasing some land to other individuals and an injunction to restrain the Respondents from entering the land which NAWASCO leased to him. He also sought an eviction order against the Respondents and to have the order supervised by the Commanding Officer of the Nanyuki Police Station.
2. The application was made on the grounds that the Applicant was the rightful lessee of land belonging to NAWASCO which he had been occupying for more than 20 years with the last renewal of the lease for 10 years having come into effect in January 2021. He stated that unknown people entered his land and destroyed his property claiming to have permission from NAWASCO. He explained that he used the land to grow grass and other crops which are his sole source of income.
3. The Applicant swore the affidavit in support of the application in which he averred that he had not received any termination of the lease from NAWASCO. He claimed that he uses the land, which was previously a landfill, and on which he had expended a lot of money clearing the garbage from the



land and turning it into arable land, to grow grass for sale, crops and vegetables. That for years he had peaceful possession of the land until early this year when the Respondents entered it and started destroying the grass and crops. That he requested the 1st Respondent to stop the other Respondents from entering his land to destroy the property but he did not listen. He Applicant annexed a copy of the letter dated January 25, 2021 approving his request to continue farming grass at the Nanyuki Sewerage Treatment Works. The letter gave the terms and conditions for the license.

4. The 3rd Respondent swore the replying affidavit in opposition to the application. He conceded that the Applicant was a lessee of the land belonging to NAWASCO where he grew grass and other crops. He denied that the 2nd to 5th Respondents had in any way destroyed the Applicant's property and annexed photographs showing some crops on the land.
5. The 3rd Respondent clarified in his affidavit that the 2nd Respondent was an employee of the 1st Respondent stationed at the sewerage where the Applicant had leased the land, while the 3rd to 5th Respondents were the Applicant's employees who had worked for him for several years. Mr Martin Mugo Murandi deponed that the Applicant had failed to pay him his salary amounting to Kshs 1,642,646/= for several months and that he had been framing charges and complaining to the police who were intimidating and harassing him. He averred that the Applicant was using the court to settle scores by terminating their employment. He urged that the application was incompetent.
6. The Applicant swore a further affidavit in which he deponed that the Respondents did not have permission to enter the land since it is leased to him for the next 10 years. Regarding the photographs, he deponed that the Respondents had taken photographs of the areas where the crops had not been destroyed and annexed photographs of the areas where crops had been damaged while pointing out that the land was approximately 50 acres. He denied owing the 3rd Respondent any money.
7. The 3rd Respondent swore a supplementary affidavit in which he invited the court to visit the suit land to establish the status on the ground. He urged that the Applicant had failed to meet the requirements for the grant of an order of injunction, eviction and the other orders sought. He denied that the Applicant's crops had been destroyed and exhibited more photographs while reiterating that the Applicant had failed to pay the money he owed him.
8. The court directed parties to file submissions. The Applicant relied on what he termed as the lease from NAWASCO which allowed him to use the land to grow grass and other crops. He cited Section 77 of the Land Act, the part applicable when a lessee is not able to obtain possession of land or buildings. He argued that due to 1st Respondent's action or inaction, he had been partially evicted from the leased land because he and members of his family could not access parts of the land. He claimed that the 1st Respondent had allowed the 2nd to 5th Respondents to enter the land and destroy his property. He urged that an order restraining the 1st Respondent from leasing the land to other individuals would ensure that he resumed quiet possession of the land. He relied on Section 65 of the Land Act and on Julius Kamande v Frank Mburu Njoroge and 2 Others (2014) eKLR while urging the court to issue an order for eviction.
9. The 2nd to 5th Respondents filed their submissions which primarily challenge the manner in which the Applicant moved the court through a miscellaneous application without any pleading to anchor the application on. They submitted that the suit was incompetent, defective and an abuse of the court process and urged the court to strike it out and award them costs. They submitted that an eviction order is ordinarily issued after a full hearing and that the Applicant ought to have filed a substantive suit for eviction through a plaint. They relied on the Civil Procedure Act as well as the decisions in Peter Mwema Kaboro v Benson Maina Gitbethuki (2005) eKLR and Eutyebus Muthui v Apolo Nteere M'Ambutu & 2 Others (2009) eKLR.



10. The issue that falls for determination is whether this court should grant the orders sought by the Applicant. Despite making the Managing Director of NAWASCO a party to this application, there is no evidence to show that the 1st Respondent had done any of the acts the Applicant complained of including evicting from the land, destroying his crops or leasing the land to the other Respondents. There is nothing to show that he did anything that interfered with the Applicant's use of the land owned by NAWASCO but which was leased to the Applicant for 10 years.
11. If at all there is a dispute between the Applicant and the 2nd to 5th Respondents regarding termination of their employment or failure to pay salaries, the proper forum to determine that would be the Employment and Labour Relations Court and not this court.
12. Section 19 of the *Civil Procedure Act* requires suits to be instituted in the manner prescribed by the rules. Order 3 Rule 1 of the *Civil Procedure Rules* stipulates that every suit should be instituted by presenting a plaint to the court, or in the other prescribed manner. This resonates with Section 2 of the Act which describes 'suit' to mean all civil proceedings commenced in any manner prescribed.
13. The court agrees with the Respondents that the Applicant did not move the court through the proper procedure as he should have filed a suit in which he would then file the application seeking the orders of injunction. A miscellaneous application is not a substantive suit prescribed by the *Civil Procedure Act* or the Rules.
14. The court dismisses the application dated April 6, 2023 with costs to the 2nd to 5th Respondents.

DELIVERED VIRTUALLY FROM NAIROBI THIS 18TH DAY OF JULY 2023.

K. BOR

JUDGE

In the presence of:

Mr. Tony Mzame for the Applicant

Ms. Stella Gakii – Court Assistant

No appearance for the Respondents

