



**Lukorito v Siror (Environment & Land Case 26 of 2019)
[2025] KEELC 1348 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1348 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 26 OF 2019
FO NYAGAKA, J
MARCH 14, 2025**

BETWEEN

VERONICA TERIGI LUKORITO PLAINTIFF

AND

MICHAEL BETT SIROR DEFENDANT

RULING

1. Food and how it relates to man has interesting life lessons. For that reason, a number of proverbs and enduring sayings have been made from them to guide people in their daily relationships. For instance, the expression, “You cannot have your cake and eat it too”, is puzzling. Why should I not eat my cake if I have access to it? Take another example of this idiom, “You cannot have a second bite at the cherry.” Why, yet cherry is sweet and if I feel like I should have even more than a second bite thereof? While the latter expression symbolizes a lack of opportunity where a first chance has failed, this is akin to what the applicant in the instant application seems to be intent to do although he succeeded in the first time in a similar application.
2. By a Notice of Motion dated 08/04/2024 the Plaintiff/Applicant moved this Court under Order 1 Rule 3, Order 51 Rule 1 of the *Civil Procedure Act*, and Section 1, 1A and 1B of the *Civil Procedure Act*. She prayed for the following orders:
 - a. ...spent
 - b. Pending the hearing and determination of this application interpartes, this court be pleased to issue a temporary injunction restraining the defendant from evicting the plaintiff/applicant from the parcel LR No. 6614/6, Trans-Nzoia.
 - c. Pending the hearing and determination of this suit, this court be pleased to issue a temporary injunction restraining the defendant from evicting the plaintiff/applicant from the parcel LR No. 6614/6, Trans Nzoia



- d. Pending the hearing and determination of this application interpartes, this court be pleased to issue a temporary injunction restraining the defendant from encroaching on the parcel LR No. 6614/6, Trans Nzoia, and from transferring, alienating and/or dealing with the parcel of land LR No. 6614/6, Trans Nzoia, in any manner whatsoever.
 - e. Pending the hearing and determination of this suit, this court be pleased to issue a temporary injunction restraining the defendant from encroaching on the parcel LR No. 6614/6, Trans Nzoia, and from transferring, alienating and/or dealing with the parcel of land LR No. 6614/6, Trans Nzoia, in any manner whatsoever.
 - f. Such other orders be made as are just and expedient.
 - g. Costs of this application be borne by the defendant/respondent.
3. The application was based on a number of grounds, being that the plaintiff entered into an agreement with the defendant on the 2/11/1974 for the purchase of 40 acres of land parcel LR No. 6614/6, situate in Trans Nzoia at a purchase consideration of Kshs.22,000/=. After the purchase the plaintiff and her family have been in possession and occupation of the suit property since 1975. Despite the purchase, the defendant has been holding the parcel of land in trust of the plaintiff but has now resorted to subdividing it and selling to third parties to the detriment of the plaintiff's interest in it. The defendant, with the intention of encroaching and transferring the suit property, is threatening to forcefully evict the plaintiff and her family from the suit land that the suit is still pending in court with a hearing scheduled for 20/5/2024 and 21/5/2024 but unless a temporary injunction is entered against the defendant, the defendant will evict the plaintiff in total disregard of the plaintiff's interest on the suit land as a purchaser for value of and rendering him and her family destitute. In the interest of justice, this application ought to be allowed.
 4. The application was supported by the Plaintiff's own affidavit which she swore on 08/04/2024. Her deposition repeated the contents of the grounds in support of the application. She, however, added that on 2/11/1974, she entered into a sale agreement with the defendant for purchase of 40 acres of land parcel LR No. 6614/4, Trans Nzoia at a purchase consideration of Kshs.. 22,000/=. She paid the sum of Kshs 20,500/=. She annexed and marked as VTL-1 a copy of the sale agreement. She deponed further that she paid the sum of Kshs.. 20,500/= for the purchase of the said land an equivalent of 37 acres, by paying Kshs.13,700/= directly to the defendant and the balance of Kshs.7,000/= directly to the Agricultural Finance Corporation (AFC). She annexed and marked as VTL-2 copies of the payment receipts.
 5. The defendant opposed the Application through an Affidavit sworn by Michael Bet Siror on 19/4/2024. He deponed that the application is an abuse of the court process and it ought to be dismissed with costs. Further, land LR No. 6614/6 is non-existent. It was not true that the plaintiff had paid Kshs.22,000/=. The plaintiff did not have his permission to pay Kshs.7,000/= into defendant's account at AFC. He (defendant) did not receive Kshs.. 20,500/= from the plaintiff. He also did not receive a further sum of Kshs.. 13,700/= from the plaintiff. At no point did he acknowledge receipt of Kshs.. 41,200/= from the plaintiff.
 6. The plaintiff was not in occupation of the parcel formerly known as LR No. 6614/6. The Deponent (defendant) was not holding any land in trust for the plaintiff. He did not receive the sum contained in the acknowledgement dated 30/6/1975. The only amount of money he received from the plaintiff was the one stated in the agreement dated 2/11/1974. Further, he had not undertaken any subdivisions or sale of the land to third parties after the suit was filed. He had no intention of evicting or threatening the plaintiff and her brothers during the pendency of the suit.



7. The plaintiff had not established a prima facie case. She had not demonstrated that she stood to suffer irreparable harm. The plaintiff had not been on the land since 1975. The application has been precipitated by mala fides. It lacked merit and ought to be dismissed with costs.
8. The Applicant having taken long to prosecute the application, may have forgotten some of the most important procedural steps she was required to take in it. Thus, she, without leave of Court filed a Supplementary Affidavit she swore on 07/12/2024. At no point in time did the Court grant leave to file it. Then come the 18/12/2024 her learned counsel indicated to the Court that he had filed both the Supplementary Affidavit and written submissions on the application. It was upon then that the Court fixed the application for Ruling on 12/03/2025, when the Applicant's Advocate did not log into the Microsoft Teams Platform to take it. It was scheduled for today.
9. That said, it is trite law that a document filed without leave of court (or consent as envisaged under Order 50 Rule 6 of the Civil Procedure Rules) is a nullity: it is illegally on record and must be expunged or declared as such. It is of no use. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR the Supreme Court of Kenya stated:

“By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such ‘an appeal’, is tantamount to moving the Court to remedy an illegality. This, the Court cannot do.

To file an appeal out of time and seek the Court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court.”
10. This Court therefore makes a finding that the Supplementary Affidavit sworn by Veronicah Terigi Lukorito on 7/12/2024 in support of the instant application is improperly on record, a nullity and should be expunged from the record. That being so, this Court need not summarize its contents herein.

Submissions

11. The application was disposed of by way of written submissions. The Applicant did not file hers while the Respondent filed his dated 2/7/2024. This Court has considered the submissions extensively and placed reliance on them herein, where necessary. Be that as it may, this Court shall consider the Application on merits since submissions are neither the parties pleadings nor evidence. This was stated in the case of *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another* [2014] eKLR where the Court of Appeal held:

“What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties’ “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”

Issue, Analysis And Determination

12. This Court has considered the application, the law and the submissions. It is of the view that only two issues commend themselves for determination. They are whether the application is merited, and who to bear the costs thereof.



13. On the first issue, whenever the court is called upon to grant or refuse an order of injunction, one thing that comes to mind immediately is that the remedy is an equitable one. Thus, for the court to grant it, it exercises discretion based on the legal principle that it is an equitable remedy. One important cardinal rule is that he who comes to equity must do equity. He must also approach the court with clean hands. Further, the exercise of the court's discretion should be judicious. This was stated in the case of *Kahoho v Secretary General, EACJ Application No. 5 of 2012*. Also, Munyao J. stated as much in *Daniel Kipkemoi Siele v Kapsasian Primary School & 2 others* [2016] eKLR <http://kenyalaw.org/caselaw/cases/view/118862> where he held as follows, "... the grant or not of an order of injunction is upon the discretion of the court. However, like all other discretions, the same must be exercised judiciously." I need not explain what it means by a Court being judicious but it suffices to say that in so doing it must take into account all the facts and circumstances of each case and make a decision that is not plainly wrong. It is a delicately balance of the interests of the parties and justice.
14. In order for a party to be granted a temporary injunction, he must pass the test set out in the case of *Giella v Cassman Brown* [1973] EA 358. It is a three-pronged one, which is:
- (a) Whether the applicant has established a prima facie case
 - (b) Whether the he or she would suffer irreparable loss that may not be compensated by damages and
 - (c) That if the court is in doubt, it may rule on a balance of convenience.
15. The question is, this being an old matter, why is the application being brought almost five years later? In the instant case, the applicant moved the Court for similar orders in another application she filed at the initiation of the suit. Thus, the principles were considered earlier when the Court dealt with a similar application. The question attendant then is whether the instant application is merited since the issues herein were dealt with earlier. The issues were between the same parties litigating in the same title over the same subject and the determination was on merits. It simply means that the instant application is *res judicata*.
16. By virtue of Section 7 of the *Civil Procedure Act*, this Court is precluded from determining a similar application. The Section provides that:
- "No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."
17. About injunctions, the relevant provisions regarding where orders are granted and the period granted lapses are Order 40 Rule 6 which provides that:
- "Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise."
18. The Applicant herein never sought an extension of the orders granted earlier. Even the instant application is not one seeking the same. The Applicant has not review of the orders which lapsed. Thus, this Court would be wasting its precious time determining the instant matter by considering the facts deposed to by both the Plaintiff and the Defendant. Suffice it to say that many facts deposed to by the



Defendant about the payments received or not received were not raised by the Plaintiff. They were not relevant and the Court need not waste its time on considering their weight and content.

19. The application is without merit and is hereby dismissed with costs to the Respondent.
20. The matter be mentioned on March 26, 2025 before the Judge for further directions.
21. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 14TH DAY OF MARCH 2025.

HON. DR. IUR FRED NYAGAKA

JUDGE

Between 9:46-9:53 AM, in the presence of:

E. Momanyi Advocate for the Defendant/Respondent

B. Kipruto Advocate for the Plaintiff/Applicant

