



**Wamukoya & 2 others v Mumias Sugar Company Limited (Under Receivership) (Environment and Land Appeal E013 of 2022) [2023] KEELC 20954 (KLR) (25 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20954 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND APPEAL E013 OF 2022  
DO OHUNGO, J  
OCTOBER 25, 2023**

**BETWEEN**

**ALI KHATA- WAMUKOYA ..... 1<sup>ST</sup> APPELLANT  
SULEIMAN ACHOKA OMOLO ..... 2<sup>ND</sup> APPELLANT  
SHABAN WAMUKOYA OMOLO ..... 3<sup>RD</sup> APPELLANT**

**AND**

**MUMIAS SUGAR COMPANY LIMITED (UNDER  
RECEIVERSHIP) ..... RESPONDENT**

*(Being an appeal from the ruling and order of the Senior Principal Magistrate's Court at Mumias (Hon. Thomas Obutu, Senior Principal Magistrate) delivered on 28th April 2022 in Mumias MCELC No. E059 of 2021)*

**JUDGMENT**

1. The background of this appeal is that the respondent herein filed the suit in the subordinate court, against the appellants, through plaint dated 22<sup>nd</sup> November 2021. Together with the plaint, the respondent filed Notice of Motion dated 22<sup>nd</sup> November 2021, through which it sought the following orders:
  1. That this Application be certified as urgent and the same be heard *ex-parte* in the first instance.
  2. That pending the hearing and determination of this Application, the Defendants/ Respondents by themselves or through their agents, servants or assigns, be restrained by an order of injunction from trespassing upon, cultivating, developing or carrying on any activity whatsoever on the parcel of land passing off as Title no North Wanga/matungu/16 or any part thereof.



3. That the Defendants do, at their cost, remove the fence that they on 27<sup>th</sup> November, 2021 erected round the suit property, and unblock the nucleus estate murrum road that they have thereby closed.
  4. That pending hearing and determination of this suit, the Defendants/Respondents by themselves or through their agents, servants or assigns, be restrained by an order of injunction from trespassing upon, cultivating, developing or carrying on any activity whatsoever on the parcel of land passing off as Title North Wang'a/ Matungu/16 or any part thereof.
  5. That in the alternative and without prejudice to the above, the *status quo* pertaining to the suit property as at 20<sup>th</sup> September, 2019 when the Plaintiff Company was placed under receivership be maintained pending the hearing and determination of this suit.
  6. That the OCS, Mumias Police Station, be directed to enforce these orders.
2. Upon hearing the application, the Subordinate Court (Hon. Thomas Obutu, Senior Principal Magistrate) delivered ruling on 28<sup>th</sup> April 2022 and allowed the application in terms of prayers 4 and 6 above and further ordered that costs be in the cause.
  3. Aggrieved, the appellants filed this appeal on 23<sup>rd</sup> May 2022 through Memorandum of Appeal dated the said date. They prayed that the ruling and order be set aside, and that the respondent be ordered to bear costs of the appeal.
  4. The following grounds of appeal were listed on the face of the Memorandum of Appeal:
    1. That the trial learned Magistrate upon issuing the order dated 23/04/2022 in favour of the Respondent the said order did not meet the threshold held in the celebrated case of *Giella v Caseman Brown* (1973).
    2. That the trial learned Magistrate failed to note that the appellants had established a *prima face* case in the trial court as they are the registered proprietors of the suit land since 01/04/2019 after having acquired the same through transmission from their now deceased father one Abdallah Omolo who was the first registered proprietor of the suit land since 20/06/1977.
    3. That the learned trial Magistrate failed erred in law and fact when he in the said ruling failed to note that the appellants rights were protected by the statute in particular sections 24 and 25 of the [Land Registration Act](#) no 3 of 2012 therefore equitable remedies cannot override statutory law.
    4. That the learned trial Magistrate failed to appreciate the law that the Respondent's right over the suit land got extinguished under section 17 of the Law of [Limitations of Actions Act](#) hence the Respondent cannot recover the suit land.
    5. That the learned trial Magistrate failed to appreciate the fact and law that the subject land has a monetarily value hence the principle of the Respondent suffering irreparable damages was not there.
    6. That the learned trial Magistrate failed to appreciate the law and fact that the Appellants were in occupation of the suit land hence the balance of convenience shifted in their favour.
  5. The appeal was canvassed through written submissions which both sides duly filed.
  6. The principles applicable while considering an appeal such as the present one are that that an appellate court will not interfere with the exercise of discretion by an inferior court unless it is satisfied that its



- decision is clearly wrong due to misdirection or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration with the result that it arrived at a wrong conclusion. See *Mombasa Cement Limited v Kitsao & 34 others* (Civil Appeal E016 of 2020) [2022] KECA 562 (KLR) (24 June 2022) (Judgment).
7. I have considered the pleadings, the grounds of appeal and the parties' submissions. The issue that arises for determination is whether the reliefs sought in the application ought to have issued.
  8. The respondent sought an injunction pending hearing and determination of the suit. To succeed in such an application, an applicant must establish a *prima facie* case with a probability of success. Even if it succeeds on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the court is in doubt as to whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience. All these conditions and stages are to be applied as separate, distinct, and logical hurdles which the applicant is expected to surmount sequentially. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. See *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
  9. In disposing of the application, the learned magistrate held that the respondent had established *prima facie* case since it showed how it acquired title to the suit property and that it developed the property by building staff quarters on it. He further found that the respondent had demonstrated that it would suffer irreparable damage if the orders were not granted, and that balance of convenience tilted in its favour.
  10. As stated above, the decision of whether to grant an interlocutory injunction is one made in exercise of discretion. This court cannot interfere with such a decision unless the appellants demonstrate that the decision is clearly wrong.
  11. From the material on record, the respondent availed material indicating that the suit property was among those that were compulsorily acquired by the government as far back as 1973. The appellants' title was issued later, in the year 2019. Going by the prayers in the plaint, the circumstances under which the appellants obtained their title and the validity thereof are matters to be resolved at trial. Nevertheless, in the circumstances of the case, the learned magistrate's exercise of discretion based on the material that was placed before him cannot be faulted. The mere fact that the appellants hold a title, which title is challenged in the suit, cannot be a sufficient basis for stating that an equitable relief cannot issue. Titles can be impeached, and that is what the respondent is intent on doing at trial. The material that the respondent availed was sufficient for purposes of surmounting the test for granting an interlocutory injunction.
  12. I find no merit in this appeal, and I therefore dismiss it with costs to the respondents.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 25<sup>TH</sup> DAY OF OCTOBER 2023.**

**D. O. OHUNGO**

**JUDGE**

**Delivered in open court in the presence of:**

Mr Wabuko holding brief for Mr Luchivya for the Appellants

Ms Kioko holding brief for Mr Tugee for the Respondent

Court Assistant: E. Juma

