



**Nganga v Kenya Railways Corporation; Ethics and Anti Corruption
Commission (Interested Party) (Environment & Land Case E216 of 2023)
[2023] KEELC 22020 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 22020 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E216 OF 2023
EK WABWOTO, J
NOVEMBER 30, 2023**

BETWEEN

JAMES MAINA NGANGA PLAINTIFF

AND

KENYA RAILWAYS CORPORATION DEFENDANT

AND

ETHICS AND ANTI CORRUPTION COMMISSION INTERESTED PARTY

RULING

1. This ruling is in respect to four applications dated 13th June 2023, 3rd July 2023, 21st July 2023 and 3rd October 2023.
2. On 27th July 2023, the Court directed that all pending application be heard together and by way of written submissions. Pursuant to section 1A, 1B & 3A of the *Civil Procedure Rules Act*, cap 21; order 40 rule 1, 3(3), 4 & 8, order 51 rule 1 of the *Civil Procedure Rules*, 2010; article 22, 25 (C), 40, 48, 50 (1), 60, 64, 159 (2), 162 (2) (b) and 259 (1) of the *Constitution* of Kenya, 2010; section 24 & 25 of the *Land Registration Act*, cap 300; section 150 of the *Land Act*, No. 6 of 2012; section 3 & 13 of the *Environment and Land Court Act*, No. 19 of 2011, the Plaintiff filed the application dated 13th June 2023 seeking the following orders:
 - i. ..Spent.
 - ii. That this Honourable Court be pleased to issue interim orders of injunction against the Defendant/Respondent from interfering with the Plaintiff/Applicant's title and the quiet, peaceful enjoyment of parcel of land LR. No 209/12361 pending the hearing and determination of this application.



- iii. That this Honourable Court be pleased to issue orders of injunction against the Defendant/ Respondent from interfering with the Plaintiff/Applicant's title and the quiet, peaceful enjoyment of parcel of land LR. No 209/12361 pending the hearing and determination of the main suit.
 - iv. That this Honourable Court be pleased to grant any other Order it deems fit.
 - v. That the costs of the Application be in the cause.
3. The Court granted Prayer 2 on a temporary basis and consequently extended the interim orders pending determination of all the pending applications.
4. The second application dated 3rd July 2023 was filed by the Defendant under the provisions of section 1A,1B,3A,63e of the Civil Procedure Act and order 40 rule 1 of the Civil Procedure Rules, seeking the following orders:
- i. That the matter be dispensed with exported for purposes of prayer 2 and 3.
 - ii. That conservatory orders be issued restraining the Plaintiff whether by agents, servants and through any party from undertaking any construction works, selling, disposing off or leasing the property LR 209/12361 pending hearing of this application interpartes.
 - iii. That conservatory orders be issued restraining the Plaintiff whether by agents, servants and through any party from undertaking any construction works, selling, disposing off or leasing the property LR 209/12361 pending hearing and determination of this application.
 - iv. That conservatory orders be issued restraining the Plaintiff whether by agents, servants and through any party from undertaking any construction works, selling, disposing off or leasing the property LR 209/12361 pending hearing and determination of the main suit.
5. With regards to the second application, the Court directed:
- (i) That the application be served forthwith upon the Plaintiff.
 - (ii) That the Plaintiff to file response with 7 days from the date of service.
 - (iii) That the Defendant be granted 5 days corresponding leave to file any affidavit if need be.
 - (iv) That the application shall be heard together with the other pending applications.
6. On 31st July 2023, yet another application was filed by the Plaintiff. This third application was dated 21st July 2023 and was premised on articles 10, 25, 40, 48, 50 (1) and 159 of the Constitution of Kenya, 2010, sections 1A, 3 & 3A of the Civil Procedure Act, cap 21, order 51 rule 1 of the Civil Procedure Rules, 2010 seeking orders in the following terms:
- i.Spent.
 - ii. That this Honourable Court be pleased to cite the Defendant/Respondent for contempt of court.
 - iii. That the Honourable Court do issue summons to the Managing Director of the Defendant/ Respondent, to appear on a determined date, to show because why he should not be committed to jail or penalized for contempt of court.
 - iv. That the Managing Director of the Defendant/Respondent be committed to jail for six (6) months for contempt of court.



- v. That in the alternate to prayer 4 above, the Managing Director of the Defendant/Respondent be penalized on such terms as the Honourable Court may determine for contempt of court.
 - vi. That the Honourable Court be pleased to make any other or further orders to guard towards protecting the dignity and authority of the court.
 - vii. That the costs of this application be in the cause.
7. The Defendant again filed yet another application dated 3rd October 2023 seeking conservatory orders. The prayers sought mirrored the prayers of the application dated 3rd July 2023. However, the grounds forwarded in support of the October application were different. It was submitted that the Plaintiff was presently constructing on the suit premise which was considered public land and had been earmarked as an access road.
 8. In his written submissions the Plaintiff argued that being the legal and absolute proprietor of the suit property, the Court should protect his proprietary rights. It was also submitted that the Plaintiff in a bid to commence construction of the commercial building with twenty (20) shops, parking space and other social amenities, took all the legal steps and acquired the following; letter of authority to excavate and transport soil to the Dandora dumpsite dated 4th January 2023, Hoarding/scaffolding license dated 10th January 2023, valid up to 3rd July 2023 and NEMA Environment Impact Assessment License issued on 9th November 2022 and valid only for twenty four (24) months
 9. The Defendant filed submissions dated 2nd October 2023 in which it was argued that the suit property is an access road serving Nairobi marshalling yard, railway station, L.R. Nos. 209/7207 & 209/6724 (railway residential) and other surrounding land parcels. Furthermore, it was submitted that the purpose of an interlocutory injunction pending the hearing and determination of a case is to preserve the suit property and avoid subjecting the successful party to further costs in execution of the Judgment of the Court.
 10. I have considered the applications, rival affidavits and written submissions filed and this court is of the view that the main issue for determination is whether either party has met the threshold for grant of the respective conservatory orders sought as prayed.
 11. Save for the application dated 21st July 2023, all Parties have inter alia sought for injunctive remedies. For this reason, I have primarily considered the balance of convenience and consequent competing rights and interest of the parties in respect to the suit property.
 12. On one hand, the Plaintiff claims to be the registered owner of the suit property, he is entitled to all the rights and privileges belonging or appurtenant yet on the other hand, the Defendant claims that the property is public property located on an access road and therefore would be part of the Defendant's yard.
 13. At this interlocutory stage, it would be most prudent to have that the suit premises preserved in its current state and protected from further degradation or change in its nature. In the specific context of such applications before this court, one should also bear in mind paragraph 32 of Practice Directions on Proceedings in The Environment and Land Courts, and on Proceedings Relating to The Environment and The Use and Occupation Of, And Title to Land and Proceedings in Other Courts (Gazette Notice No. 5178 of 2014) which provides:

“During the inter-partes hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order for status



quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.”

14. In view of the foregoing, the Court makes the following disposal orders:

- i. An order of injunction is hereby issued restraining all parties, their agents, and servants or through any party whatsoever from interfering, constructing, selling, disposing or leasing the property known as LR No 209/12361 pending hearing and determination of the main suit.
- ii. Costs will abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF NOVEMBER 2023.

E. K. WABWOTO

JUDGE

In the presence of:

Mr. Oduk for the Plaintiff.

Mr. Kelvin Njuguna for the Defendant.

