



REPUBLIC OF KENYA



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Abdulrehman v OCS, Lamu Central Police Station & 2 others (Environment & Land Case E109 of 2024) [2025] KEELC 3555 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3555 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E109 OF 2024
FM NJOROGE, J
APRIL 30, 2025

BETWEEN

ABDULREHMAN ALI ABDULREHMAN PLAINTIFF

AND

OCS, LAMU CENTRAL POLICE STATION 1ST DEFENDANT

SUB-COUNTY POLICE COMMANDER, LAMU CENTRAL ... 2ND DEFENDANT

INSPECTOR GENERAL, NATIONAL POLICE SERVICE 3RD DEFENDANT

RULING

1. The application for determination is dated 22/10/2024 brought under Sections 1A, 1B, 3, 3A and 63 (e) of the *Civil Procedure Act*; Order 40 Rule 1 and 10 (a) of the Civil Procedure Rules. The orders sought are as follows:-
 1.Spent;
 2.Spent;
 3. Pending the hearing and determination of this suit, an order of temporary injunction hereby issues restraining the 1st and 2nd Defendants by themselves, their servants, agents or any other person claiming under their name from further trespassing, encroaching into, erecting temporary or permanent structures, carrying out any development activities, wasting, continuing to occupy or from any way adversely dealing with the Plaintiff's property being Title Numbers Lamu Island/Block I/717, Lamu Island/Block I/718 and Lamu Island/Block I/257;
 4. The 3rd Defendants to oversee execution of any order given herein;
 5. Costs be provided for.



2. The application which is premised on the grounds numbered in the motion, is supported by the affidavit sworn by the Plaintiff on 22/10/2024. According to the Plaintiff, he is the registered owner of the properties identified as Title Numbers Lamu Island/Block I/717, Lamu Island/Block I/718 and Lamu Island/Block I/257 (hereinafter also referred to as “the suit properties”) which abut the Lamu Central Police Station, operated by the 1st and 2nd Defendants. The Plaintiff alleged that the said Defendants have continued to trespass on the suit property despite the Plaintiff filing several complaints. The Plaintiff alleged that his attempts to resolve the issue has only been met with intimidation and threats, and that the 1st and 2nd Defendants have began erecting permanent structures at a lightning speed.
3. The Defendants opposed the application through Gabriel Ojwang, State Counsel at the Office of the Attorney General. They filed grounds of opposition dated 10/12/2024. The grounds were listed as follows: -
 1. That the application is bad in law, misconceived, mischievous and an abuse of the court process;
 2. That the Plaintiff herein is not the registered owner of property Title Number Lamu/Block I/1257 and not the sole registered owner of Title Number Lamu Island/Block I/718;
 3. That since the Plaintiff is not the registered owner and/or the sole registered owner of the parcels above, he does not have the locus standi to bring any action on the suit properties by virtue of that fact or without the authority of the co-owners who are not parties to this suit and application;
 4. That the 1st Defendant is unknown in the Republic of Kenya as there is no police station called Lamu Central Police station;
 5. That from the images annexed as AA-6 it is evident that:
 - a) The picture reveals only one structure;
 - b) The structure is not being erected but being renovated meaning it has been in existence even the walls point to that effect since they are very old;
 - c) It is not logic that the single structure being renovated occupies all the suit properties listed in the application in which also it is not clear on which property the structure lies;
 6. That this court cannot issue orders in favour of non-parties.
4. The application was canvassed by way of written submissions.

Plaintiff's Submissions

5. On temporary injunctions, counsel relied on the test established in *Giella vs Cassman Brown and Co.* [1973] EA and reiterated in *Nguruman Limited v Jan Bonde Nielsen, Herman Philipus Steyn Also Known As Hermannus Phillipus Steyn & Hedda Steyn* [2014] KECA 606 (KLR) where the court added that the conditions are to be applied as distinct and logical hurdles that must be surmounted sequentially, and in *Gesa Building and Civil Engineering Ltd v George Ngunire Chira & Equity Bank Limited* [2019] KECA 1029 (KLR) where the court also added that a court seized of an application for injunction ought not make definitive conclusions of either fact or law so as not to embarrass the court that will ultimately hear the action.
6. Counsel added that the standard of proof when it comes to establishing a prima facie case is on a balance, or preponderance of probabilities as was said in the *Nguruman* case (supra). According to



- counsel, since the facts in the supporting affidavit are not controverted, the Plaintiff has thus made out a prima facie case with a probability of success. To support this argument, counsel relied on the case of Nation Media Group, Wilfred Kiboro & Wangethi Mwangi v John Harun Mwau [2014] KECA 308 (KLR).
7. Counsel further submitted that the Defendants did not allege ownership therefore, they cannot have any competing answer as to defeat the Plaintiff's averment that he has valid rights over the suit property both as a registered proprietor and as a beneficial owner.
 8. On the issue of locus standi, counsel argued that there is no law suggesting that a co-owner cannot agitate his valid rights over suit property as against third parties. He submitted that the court in Nguruman Limited v Jan Bonde Nielsen, Herman Philipus Steyn Also Known as Hermannus Phillipus Steyn & Hedda Steyn [2014] KECA 606 (KLR), has already spoken for the Plaintiff that "...the applicant need not establish title if it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges."
 9. On irreparable injury, counsel submitted that Article 40 of *the Constitution* of Kenya protects the rights to property, and that a person will not be arbitrarily deprived of their property; that this is echoed under Sections 24 and 25 of the *Land Registration Act*; that the Defendants continue to deny the Plaintiff this right with no legal justification, and there cannot be greater irreparable injury than denying a party their constitutional and statutory right. To support this view, counsel relied on the cases of Kwale Cement Factory Limited & Rising Star Commodities Ltd v Bank of Africa Kenya Limited [2019] KEHC 7819 (KLR); and Paul Njau Kimutua v Dickson Mbugua Njau [2011] KEHC 620 (KLR).
 10. Again, citing the Paul Njau case [supra], counsel submitted that if at all there was any doubt, the balance of convenience is in favour of the Plaintiff rather than the Defendants who are plainly trespassers.
 11. Counsel added that the issue of misjoinder of the 1st Defendant should not defeat the application or even suit at this stage. To buttress this, he was guided by the provisions of Order 1 Rule 9 and the case of Olago & another (Suing on their behalf and on behalf of 26 other-persons) v Njau & 3 others; National Environmental Management Authority (Interested Party) [2022] KEELC 13726 (KLR).

Defendants' Submissions

12. Guided by the decision in Giella v Cassman Brown & Co Ltd (1973) E A 358 as cited in the case of Ephraim Wambu Miano vs Kenya Commercial Bank Ltd [2004] eKLR, counsel submitted that the three issues for determination are whether the Plaintiff has established a prima facie case; whether the Plaintiff will suffer irreparable injury which would not be adequately compensated by an award of damages; and on whose side does the balance of convenience tilt.
13. Counsel reiterated that the Plaintiff only owns solely one of the properties and has no authority to file suit on behalf of the other owners mentioned in the respective titles. To him, the Plaintiff's pleadings were not clear and urged the court to dismiss the application as was done in the case of Grace Kasenge Mutisya v Willy Mwanzia [2018] eKLR.
14. Counsel further submitted that it was not clear whether the alleged trespass, being a one house being allegedly renovated by the Defendants, was on the Plaintiff's land or the other named proprietors. To him, the Plaintiff had failed to establish a prima facie case. To support his arguments, counsel relied on the case of Blue Ocean Branding Limited & another v Brand Track Limited & 3 others [2025] KEHC 17146 (KLR).



Analysis

15. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* [CA No.77 of 2012](#) (2014) eKLR where the Court of Appeal held that: -

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

16. The definition of a prima facie case is now well recognized from case law. As rightly submitted by the Plaintiff, a prima facie case was defined by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd* (2003) eKLR as –

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

17. In support of his application, the Plaintiff attached copies of documents of title to the suit properties. He is registered as a sole owner of plot 717, as a proprietor in common of plot 718, while plot 1257 is registered to one Najma Ali Abdurehman. The Plaintiff averred that the 1st and 2nd Defendants have encroached on these three parcels of land which are adjacent to the said Lamu Central Police Station.
18. Even before delving into the issue of existence or otherwise of Lamu Central Police Station, this court needs to examine whether the applicant has demonstrated a prima facie case. There are 3 plots with different details on ownerships. The Plaintiff alone owns plot 717 and, together with two others owns 718. It is not clear from the present pleading whether the Defendants have allegedly encroached on these two plots of which he has demonstrated ownership, or on the third plot alone (plot 1257) which is registered exclusively to a third party who is not a party to this suit or on all of them. The court is so far not aware of whom the third party is and why, despite being said to have an interest in the suit



land, is not the person approaching court. Meanwhile the claim to beneficial ownership thereof by the plaintiff has not yet been substantiated.

19. It is the opinion of this court that the imprecision in the applicant's pleading, as well as lack of any presentation of grounds upon which he purports to sue on behalf of the parties not before court, and also the lack of demonstration of authority to do so, does not allow for the grant of the orders sought. I am thus not satisfied that the Plaintiff has established a prima facie case to warrant the granting of the reliefs sought.
20. Having failed to establish a prima facie case, there is no basis for the court to consider whether the Plaintiff has successfully demonstrated the remainder two conditions established in the Nguruman case (supra). In the circumstances, this court declines to grant the orders sought.
21. The upshot is that the Notice of Motion dated 22/10/2024 lacks merit and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30TH DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

