



**Chumo v Koech & another (Environment & Land Case 30 of 2023)
[2023] KEELC 21800 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21800 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 30 OF 2023
A OMBWAYO, J
NOVEMBER 24, 2023**

BETWEEN

ESTHER LANGAT CHUMO PLAINTIFF

AND

CHARLES KOECH 1ST DEFENDANT

JOSEPH KOECH 2ND DEFENDANT

RULING

1. Esther Langat Chumo (hereinafter referred to as the applicant) has come to this court seeking an order that pending the hearing and determination of this suit, this honorable court be pleased to issue orders of injunction restraining Charles Koech and Joseph Koech (hereinafter referred to as the respondents) by themselves, their servants, agents, proxies and/or persons exercising authority from them from inhibiting, dealing, trespassing and/or in any other manner interfering with the plaintiff's quiet use, occupation and possession of all those parcels of land known as L/R No. Rongai/Rongai Block 2/9. She prays for costs of this application.
2. The application is based on grounds that the Plaintiff is the legal and lawful proprietor of land parcel L/R No Rongai/Rongai Block 2/9 having lawfully acquired the same through purchase from one Alfred Kipkoech Kirui, who is since deceased. The Plaintiff has been in actual possession and occupation of the suit properties since the year 2004 together with her family where they have lived to date and has had the parcel as her only source of livelihood.
3. That the defendants have trespassed and illegally brought down several trees in the parcel without the consent of the plaintiff. The plaintiff has in numerous occasions requested the defendants to cease the illegalities but they have blatantly refused to cause an immediate stop to the illegalities and instead have vowed to wipe clean the land at the desperate watch of the plaintiff.



4. The plaintiff is moving this court as a forum of last resort in a bid to have her constitutionally enshrined right to property and livelihood protected from the thirst of the defendants,
5. According to the plaintiff, these illegalities are effectuated on the Plaintiff's land parcels without her express authority, notice or being informed of the reasons informing the cutting down and subsequent sale of the trees.
6. The defendants are unjustifiably enriching themselves from the blood and sweat of the plaintiff and she is thus apprehensive that unless the defendants are restrained from perpetuating their fraudulent and illegal acts on her land parcel, she will not be able to enjoy peaceful and quiet possession of the said land parcels and is likely to be deprived of her proprietary rights over the said properties.
7. The actions of the defendants are recipes for chaos, lawlessness and bloodshed since the defendants made forced entry unto the Plaintiffs land parcels with the sole intent of destroying the plaintiff's property while threatening the Plaintiff and her family. They are living in fear of their lives.
8. The defendants may at any time forcefully and in total disregard of the law evict the Plaintiff and her family and dispossess her of occupation and possession of the properties to their detriment.
9. The Constitutional Right to property accorded to the Plaintiff and indeed any Kenyan under Article 40 of *the Constitution* of Kenya, 2010 has been threatened by the Defendants and continues to be threatened unless the defendants are tamed by this Honorable court.
10. The defendants are without any color of right and their actions amount to trespass and have placed the Plaintiff on the verge of losing her lawful proprietorship over the property.
11. The Plaintiff is the legal and absolute proprietor of the suit properties and whose rights to own and enjoy the properties are now threatened by fraudsters being the defendants.
12. Unless the defendants are restrained from perpetuating the aforementioned illegal acts on the Plaintiff's land, she will not be able to enjoy peaceful and quiet possession of the land. The supporting affidavit of Esther Langat Chumo reiterate the grounds.
13. The defendants filed a replying affidavit sworn by Charles Koech whose import is that he does not know the plaintiff and that she does not reside on the land and that the affidavit supporting the application is fake and false. He further states that the handwriting in the agreement was not his fathers and that the agreement appear to be forged. He contends that the applicant has taken more than 20 years to come to court and therefore the suit is time barred. That after the demise of his father, his mother became the administrator of the estate of the deceased and that the plaintiff is not a beneficiary. The defendants state that the property is being managed by a farm manager who plats various crops thereon. The plaintiff does not reside on the land. The defendant state that they planted the trees on the land and do not need the permission of anybody to cut the same. According to the defendants, the plaintiff is a mere land speculator seeking to gain entry into the parcel of land when she has no color of any right of entry.
14. The judicial decision of *Giella Versus Cassman Brown* (1973) EA 358 is the locus classicus guide on the grant of temporary injunctions. The above precedent was reiterated in the case 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, establishes his case only at a prima facie level, b, demonstrates irreparable



injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

15. Consequently, the Plaintiff ought to, first, establish a prima facie case. The plaintiff/Applicant submitted that they have established a prima facie case and relied on the judicial decision of Mrao Ltd Versus First American Bank of Kenya Ltd (2003) EKLR in which the Court of Appeal gave a determination on a prima facie case. The court stated that:

“... 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.”

16. Secondly, The Plaintiff has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The plaintiff has relied on the judicial decision of Pius Kipchirchir Kogo Vs Frank Kimeli Tenai (2018) eKLR provides an explanation for what is meant by irreparable injury and it states;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

17. I have considered the application and the supporting affidavit and the replying affidavit and do find that the plaintiff claim that she is in actual possession of the land and has planted the trees is countered with the defendant’s contention they are also in actual possession and have planted the trees.

18. The only independent statement is by the National Land Commission Nakuru County coordinator Kossiom Ole Kibelekenya who wrote a letter to the Land Registrar Nakuru to place a restriction on the title as the plaintiff was in possession and that the defendants wanted to retake the land. The letter by the office of the county coordinator of the National Land Commission indicates that the plaintiff is in possession but the same requires verification by the court. This court finds that the plaintiff has established a prima facie case with a likelihood of success as she has demonstrated a scintilla of right through purchase and possession.

19. I have perused the photographs attached to the supporting affidavit and the replying affidavits and do see structures and trees growing and cut down and do find that if an injunction is not granted the plaintiff will suffer irreparable loss as the cut trees will take time to replace.

20. Thirdly, the Plaintiffs have to demonstrate that the balance of convenience tilts in their favour. In the case of Pius Kipchirchir Kogo Vs Frank Kimeli Tenai (2018) EKLR which defined the concept of balance of convenience as:

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance



of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

21. I do find that even if this case was to be determined on a balance of convenience, the balance of convenience tilts towards granting injunction as the plaintiff is in possession and is likely to suffer inconvenience if the trees in the parcel of land are destroyed and eventually she succeeds in the suit. The defendants will suffer no inconvenience if the injunction is granted and they succeed in the suit as they will be paid damages and in any event the trees will still be available for their use.
22. The upshot of the above is that I do grant an order of status quo to be maintained in the land register at the lands office and that the plaintiff to remain in possession of the suit land until the hearing and determination of the suit and that she is also restrained from any act of wastage such as cutting the trees and wasting the soil and any such acts. The matter to be fast tracked for hearing. Cost to be in the cause.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24TH DAY OF NOVEMBER 2023.

A .O .OMBWAYO

JUDGE

