



REPUBLIC OF KENYA



**Kefa & 32 others v Kenya Petroleum Refineries (Environment & Land
Case E028 of 2025) [2025] KEELC 3832 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3832 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E028 OF 2025**

**YM ANGIMA, J
APRIL 30, 2025**

BETWEEN

BONFACE KEFA & 32 OTHERS PLAINTIFF

AND

KENYA PETROLEUM REFINERIES DEFENDANT

RULING

A. Introduction

1. By a plaint dated 12.03.2025 the plaintiffs sued the defendant claiming ownership of the suit properties described as plot Nos. MN/VI/3957, 2504, 2505 and 3074. They pleaded that they were the lawful owners or beneficial owners thereof on account of the longevity of their occupation.
2. The plaintiffs pleaded that the defendant had unlawfully marked the houses and structures on the suit properties for demolition on the basis of a decree passed in Mombasa HCCC No. 544 of 2008 which concerned a totally different property being MN/VI/255/1. They further pleaded that the defendant had not made any arrangements for their relocation and compensation hence their intended eviction was unlawful and a violation of their constitutional rights.

B. Plaintiffs' application

3. Vide a notice of motion dated 12.03.2025 expressed to be filed pursuant to Articles 50 (1) of 159 of *the Constitution*, Sections 1A, 1B, 3A and 63 (c) of the *Civil Procedure Act* (Cap 21), Order 40 Rule 1, 2 and 4 of the Civil Procedure Rules and any other enabling provisions of the law, the plaintiffs sought an interim injunction to restrain the defendant from evicting them or demolishing their houses pending the hearing and determination of the suit.
4. The application was supported by an affidavit sworn by Bonface Kefa on 12.03.2025. It was based on essentially the same grounds set out in the body of the plaint. The plaintiffs contended that they



were the legitimate owners or beneficial owners of the suit properties and that the defendant had no right to evict them since the decree passed in Mombasa HCCC No. 544 of 2000 did not apply to the suit properties. The plaintiffs' claim was also based on the fact that the state had an obligation to provide them with housing and that their right to own property under Article 40 of *the constitution* was threatened with violation.

C. Defendant's response

5. The defendant filed a replying affidavit by Kadzo Kalama on 19.03.2025 and a further replying affidavit sworn by him on 20.03.2025. It was pleaded that Plot No. MN/VI/255 was subdivided into Plot No. MN/VI/255/1 and MN/VI/2504 and that the decree passed in HCCC No.544 of 2000 covered the entire plot 255. It was the defendant's response that in the said suit it was determined that plot 255 belonged to the defendant and the occupants thereof among them the plaintiffs herein were ordered to vacate.
6. It was the defendant's case that it had an operational petroleum transportation pipeline installed on what was known as plot 255 and that it was dangerous to allow the plaintiffs to continue in occupation as they may interfere with the pipeline which may result into disastrous consequences. It was further claimed that the plaintiffs' presence had hindered the defendant's efforts to inspect and maintain the pipeline. In its further replying affidavit the defendant stated that the plaintiffs were aware of all previous cases on the subject matter including Mombasa ELC No. E017 of 2025 to which some of the them were parties.

D. Directions on submissions

7. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the plaintiffs filed written submissions dated 14.04.2025 whereas the defendant filed submissions dated 22.04.2025.

E. Issues for determination

8. The court has perused the application dated 12.03.2025, the affidavits in opposition thereto as well as the material on record. The court is of the view that the main issues for determination are the following:
 - a. Whether the plaintiffs have made out a case for the grant of an interim injunction.
 - b. Who shall bear costs of the application.

F. Analysis and determination

a. Whether the plaintiffs have made out a case for the grant of an interim injunction

9. The principles to be satisfied in an application for an interim injunction were summarized in case of *Giella vs Cassman Brown Ltd* [1973]EA 358 as follows;
 - a. First, an applicant must demonstrate a prima facie case with a probability of success at the trial.
 - b. Second, an injunction will not normally be granted unless the applicant demonstrates irreparable loss or injury which cannot be adequately compensated by an award of damages.
 - c. Third, if the court is in doubt regarding the second principle then it shall decide the application on a balance of convenience.



10. The court has considered the material and submissions on record. Whereas the plaintiffs submitted that they had satisfied the principles for the grant of an injunction, the defendant contended otherwise. It was the defendant's submission that the plaintiffs had failed to demonstrate their alleged ownership whether legal or beneficial of the suit properties hence they had failed to demonstrate a prima facie case with a probability of success at the trial.
11. In the case of *Mrao Limited vs First American Bank of Kenya Ltd & 2 others* [2003] eKLR, it was held inter alia that;

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which, on the material presented to the court, a tribunal properly directing itself would conclude that there exists a right which had apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
12. It is evident from the plaint that the plaintiffs claim to be the legal or beneficial owners of the suit properties. However, they did not demonstrate the basis of the alleged legal or beneficial ownership at all apart from the fact that they had erected some structures on the land. The plaintiffs have not made a claim for adverse possession of the suit properties and they have not demonstrated who is the registered owner of the suit properties other than parcel 2504 which appears to be a sub-division of the original parcel 255. The mere fact that the suit properties may not have been the subject of HCCC No. 544 of 2000 is neither here nor there because that decree did not confer ownership of the suit properties upon the plaintiffs or any of them.
13. The court has noted that the plaintiffs were quite economical with facts relating to their alleged cause of action. They did not state in their plaint or application when they entered the suit properties and the circumstances under which they took possession. They did not disclose whether the suit properties constituted public private or community land. They did not explain why it took them such a long time to assert their legal or beneficial rights over the suit properties. In the premises, the court is far from satisfied that the plaintiffs have demonstrated a prima facie case with a probability of success at the trial. In the event, it shall not be necessary to consider the second and third principles for the grant of an injunction. The plaintiffs' application has thus failed at the first hurdle hence they are not entitled to the interim injunction sought.

b. Who shall bear costs of the application

14. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the defendant shall be awarded costs of the application.

G. Conclusion and disposal order

15. The upshot of the foregoing is that the court finds that the plaintiffs have failed to satisfy the principles for the grant of an interim injunction. As a consequence, the court makes the following orders;
 - a. The notice of motion dated 12.03.2025 be and is hereby dismissed with costs to the defendant.
 - b. The suit shall be mentioned on 17.06.2025 For pre-trial directions.



RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 30TH DAY OF APRIL 2025.

In the presence of:

Mr. Yose for plaintiffs

Mr. Lumatete for defendant

Gillian Court assistant

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Y. M. ANGIMA

JUDGE

