



Kimani v Alai & 3 others; Alcon Holdings Limited (Interested Party) (Environment & Land Case E002 of 2024) [2025] KEELC 3453 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3453 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E002 OF 2024
CA OCHIENG, J
APRIL 30, 2025**

BETWEEN

JOHN KIMANI APPLICANT

AND

ROBERT ALAI 1ST RESPONDENT

NAIROBI CITY COUNTY 2ND RESPONDENT

NAIROBI CITY COUNTY ASSEMBLY 3RD RESPONDENT

CHIEF LAND REGISTRAR (NAIROBI) 4TH RESPONDENT

AND

ALCON HOLDINGS LIMITED INTERESTED PARTY

RULING

1. What is before Court for determination is the Applicant’s Notice of Motion application dated the 6th June 2024. The Applicant seeks the following Orders:
 - a. Spent.
 - b. That pending hearing and determination of this application inter parties, a temporary injunction be issued restraining the Defendants, their servants and/or agents from alienating, disposing, selling by public auction or private treaty or otherwise dealing with the suit land LR No.209/8874/26 Oloitoktok road Kileleshwa and/or unlawfully interfering or in any other way whatsoever meddling with the Applicant’s occupation and/or quiet enjoyment of the suit land.
 - c. That the Defendants, their servants and /or agents be temporarily restrained from alienating, disposing, advertising and selling by public auction or private treaty or otherwise dealing



with the suit land LR No. 209/8874/26 Oloitoktok road Kileleshwa pending hearing and determination of this suit.

- d. That this Honourable court be pleased to order the OCS Kileleshwa Police station to provide security at all material times during the impending unlawful eviction, seizure and clearing exercise.
 - e. Spent.
 - f. That this Honourable court be pleased to issue further or other order (s) as it may deem just and expedient for the ends of justice.
 - g. That the costs of this application be provided for.
2. The application is premised on grounds on its face and on the Applicant's supporting affidavit. He avers that he has been living on his parcel of land known as LR No.2/214 Oloitoktok Road since August 1988 and that LR No.209/8874/26 adjacent to his parcel is registered in the name of the Interested Party. Further, that way back in 1994, with his immediate neighbor one Margaret Muigai, they raised an objection to the Commissioner of Lands, issuing a title in respect of LR No. 209/8874/26 to the Interested party on the basis that it blocked access to their adjacent properties and matrimonial homes. He claimed that the Interested Party vacated the suit land in 1994 and has never been seen or heard of.
 3. He contends that he has since occupied LR No. 209/8874/26 and that he enjoys quiet possession as he uses it, as his family kitchen garden. Further, that he has carried out extensive maintenance and tiling in order to make the property arable and has extensively invested in maintaining a fence around the boundary so as to secure the property. He avers that he has acquired a right of ownership of the suit land by adverse possession, which he alleges rightly accrued to him by virtue of his uninterrupted, continuous and exclusive possession of the said land for more than 35 years.
 4. He states that in February 2024, the 1st Respondent being the MCA Kileleshwa, turned up at the suit land in the company of unknown people with an intention to forcefully seize it, wrongly presuming that it was a public property and unclaimed land. Further, that being a famous politician, who is widely followed and a social media influencer with a huge following, he embarked on a social media campaign to discredit him as a grabber.
 5. He claims that the 1st to 3rd Respondents have proceeded with a plan to compulsorily acquire private land, without due process, contrary to the provisions of Article 40 (3) of the *Constitution* and the Land Acquisition Act. Further, that the 3rd Respondent has illegally issued a letter to the 1st Respondent through the 2nd Respondent directing the 1st Respondent to proceed and secure the suit land.
 6. The application is opposed by the 1st and 3rd Respondents vide Grounds of Opposition dated the 29th October 2024. They contend that the Applicant has no locus standi to institute the suit on behalf of the owner of LR No. 209/8874/26, which renders the suit incompetent. Further, that the Applicant has not provided ownership documents in respect of LR No. 209/8874/26 thus he is a trespasser who has illegally carried out activities within the suit land for an extended period and has approached the court with unclean hands as he is calling upon it, to sanitize his illegality by granting conservatory orders when he has not met the threshold for grant of the said orders.
 7. The application is also opposed by the 2nd Respondent vide the replying affidavit of Boniface Waweru, Advocate. He avers that the Applicant having failed to avail any ownership document or even a Letter of Allotment in his favour, does not have a prima facie case with any chance of success at trial and has not demonstrated how he will suffer irreparable harm incapable of being compensated by way of



damages, if the orders sought are not granted. Further, that the balance of convenience tilts in favour of not granting the orders sought as the suit land is public land and one cannot acquire it, vide the doctrine of adverse possession.

8. The application is opposed by the Interested Party vide the replying affidavit of Jaspriya Kaur Hanspal, Administrator of the Estate of Davinder Singh Hanspal who owns majority shares in the Interested Party. He avers that the Interested party purchased land parcel LR No. 209/8874 vide a transfer registered on 12th October 1979, which it subdivided into several plots, including the suit land. He denied that the Interested Party transferred the suit land and insisted that the said land does not belong to the Applicant nor the Respondents. Further, that their entry into the suit land amounts to trespass and the Interested Party has since issued them with demand notices to vacate. He contends that from among entries to the mother title, entry No.39 for the suit land is a caveat registered by one Margaret Muigai claiming an easement of way.
9. In response to the Interested Party's replying affidavit, the 2nd Respondent filed a supplementary affidavit sworn by Boniface Waweru, Advocate. He avers that the suit land was compulsorily acquired by the government for construction of Nairobi Western Ring Road Vide Gazette Notice No. 11218 published on 24th September 2010 and an Inquiry Notice for the hearing of claim for compensation by people interested in the said parcel was issued vide gazette Notice No. 11219 published on 24th September 2010, when the directors/shareholders of the Interested party were alive and aware of the processes. Further, that there is no record of claim/complaint against the Commissioner of Lands in relation to the said compulsory acquisition.
10. He avers that once property is compulsorily acquired by the government for public interest and after following the legal processes and compensating the private owner, it becomes public land, for public use and cannot be available for private use.
11. The application was canvassed by way of written submissions.

Submissions

12. In his submissions, the Applicant insists he is entitled to the orders as sought having met the threshold in *Giella v Cassman Brown* [1973] E.A 358. He claims that he has a right which has been breached and that the 1st Defendant's action of commencing developments and excavations on the suit land will interfere with it, rendering it unfit for the purpose he is utilizing it for, being farming thus causing him irreparable damage. He further submits that the balance of convenience lies in allowing the instant application. To support his arguments, he relied on the following decisions: *Mrao v First American Bank of Kenya Limited & 2 Others* (2003) eKLR and *Maikuma Wekesa Buchungu v Donald Wekesa Muyundo & 7 Others* [2018] eKLR.
13. The 2nd Respondent submits that the Applicant has failed to demonstrate to the court that he has any rights attached to the suit land that are capable of being infringed upon thus he has failed to establish a prima facie case as his interest in the said property is not captured in any ownership document. It argues that pleadings filed by a person who has no locus standi are void ab initio.
14. It insisted that Jaspriya Kaur Hanspal, has no capacity to swear the replying affidavit on behalf of the Interested Party as he is not its officer or director and he failed to produce a resolution of the Interested Party giving him authority to swear the aforementioned affidavit. Further, that the Grant of Probate only confers him authority to administer the Estate of Davinder Singh Hanspal.
15. To support its argument, it relied on the case of *Ibrahim v Hassan & Charles Kimenyi Macharia* [2009] eKLR.



16. In their submissions, the 1st and 3rd Respondents place reliance on the case of Virginia Edith Wamboi Otieno v Joash Ochieng Ougo & another (1982-99) 1 KAR, Morjaria v Abdalla [1984] KLR 490 and in Touristic Union International & another v Jane Mbeyu & another (2008) IKLR (G &F) 730 to argue that the Plaintiff has no locus standi to institute this suit on behalf of the suit land's owner, which renders the suit incompetent and fatally defective.
17. They also submit that there is no material to properly guide this court to reach an outcome that there exists a right, which was infringed upon and that it is not possible to make a determination at this interlocutory stage on the validity of the Plaintiff's allegation of ownership. Further, that possession is unsubstantiated.

Analysis and Determination

18. Upon consideration of the instant Notice of Motion application including the Grounds of Opposition, respective affidavits and rivaling submissions, the only issue for determination is whether the Plaintiff is entitled to orders of interlocutory injunction restraining the Defendants from LR No. 209/8874/26 Oloitoktok road Kilelesha, pending the hearing and determination of this suit.
19. In relying on the principles on injunctions as espoused in the case of Giella v Cassman Brown & Co Ltd [1973] EA 358 including the definition of a prima facie case as stated in the case of Mrao v First American Bank of Kenya Limited & 2 Others (2003) eKLR, I will proceed to determine whether the Plaintiff is entitled to the orders as sought.
20. The Plaintiff seeks an interlocutory injunction seeking to restrain the Defendants from the suit land claiming he has been utilizing the said land for over thirty five (35) years, hence acquired it through adverse possession, which application is vehemently opposed by the Defendants and Interested Party. The Defendants contend that the suit land is public land, which the government had acquired through compulsory acquisition in 2010 hence cannot be acquired through adverse possession. The Interested Party insists that it owned the suit land and it has never been sold to any third party.
21. On perusal of the Plaint, I note the Applicant has sought for various orders including a permanent prohibition order restraining the Respondents from the suit property; a declaration that compulsory acquisition of the suit land by the Respondents is illegal; a declaration that intended forceful eviction without notice contravenes his rights and a permanent order to issue against the Respondents to desist from the acts. The Respondents have contended that the Applicant does not have locus standi to bring forth this suit and further that he has not presented any documents of title to that effect.
22. Looking at the documents presented, I note the Applicant except for claiming that he has been using the suit land for a family kitchen garden and tendered it, has not presented any documents of title to prove his claim. Further, I note from correspondence attached to the supporting affidavit, it emerges that the suit land is a road reserve/ public land. I note none of the parties have denied the Respondents' averments that the suit land was compulsorily acquired by the government for construction of Nairobi Western Ring Road Vide Gazette Notice No. 11218 published on 24th September 2010. Further, that an Inquiry Notice for the hearing of claim for compensation by people interested in the said parcel was issued vide gazette Notice No. 11219 published on 24th September, 2010. In my view, I have no reason to dispute that the suit land indeed belongs to the government.
23. Based on the facts before me, I find that since the Applicant is not the owner of the suit land, and cannot claim public property through adverse possession, he has indeed not established a prima facie to warrant the orders of interlocutory injunction as sought.



24. Further, in relying on the case of Nguruman Ltd. Vs. Jan Bonde Nielsen (2014) eKLR, where the Court of Appeal held that where an Applicant has failed to establish a prima facie case, the Court need not proceed to deal with the remaining two limbs on injunction, and I will hence decline to do so.
25. In the circumstance, I find the instant Notice of Motion application unmerited and will disallow it.
26. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF APRIL 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Nyambega holding brief for Mayieka for Plaintiff

Mutie for Muriuki for 2nd Respondent

Namude for Mr. Athuok for Interested Party

Ashioya for 1st Respondent

Court Assistant: Joan

