



REPUBLIC OF KENYA



**Enole v Tonkei & 4 others (Environment & Land Case E003 of 2023)
[2023] KEELC 21704 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21704 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E003 OF 2023**

EM WASHE, J

NOVEMBER 16, 2023

BETWEEN

KEJOOLO ENOLE PLAINTIFF

AND

OLEUNWA TONKEI 1ST DEFENDANT

**LAND ADJUDICATION OFFICER TRANSMARA SOUTH WEST & SOUTH
SUB-COUNTIES 2ND DEFENDANT**

JOEL LETAYA RAKITA 3RD DEFENDANT

LAND REGISTRAR, KILGORIS 4TH DEFENDANT

JOEL NAKUTIT MELOBU 5TH DEFENDANT

RULING

1. The Plaintiff (hereinafter referred to as “the applicant”) filed a notice of motion application dated 2nd February 2023 (hereinafter referred to as “the present Application”) seeking for the following Orders;-
 - a. That this application be certified urgent and its service thereof be dispensed with in the first instance. (spent)
 - b. That pending the hearing and determination of this Application, this Honourable Court be pleased to restrain the Defendants/Respondents by themselves, their agents, Servants and employees from entering, alienating, selling, transferring, leasing, disposing and/or interfering in any manner whatsoever with a land known as Transmara/Kimintet “D”/1681 measuring approximately 95.81 hectares.



- c. That pending the hearing and determination of this application inter-partes this Honourable Court be pleased to issue an order for temporary injunction to the Land Registrar Kilgoris not to carry any transaction relating to the title No. Transmara/Kimintet “D”/1681 measuring approximately 95.81 Hectares.
 - d. That pending the hearing and determination of this suit, this Honourable Court be pleased to restrain the Defendants/Respondents by themselves, their agents, Servants and employees from entering, alienating, selling, transferring, leasing, disposing and/or interfering in any manner whatsoever with a land known as TRansmara/Kimintet “D”/1681 measuring approximately 95.81 Hectares.
 - e. That costs of this application be provided for.
2. The prayers sought hereinabove have been premised on various reasons outlined in the body of the present Application as well as the Supporting Affidavit sworn by the Applicant on the 2nd February 2023.
3. The reasons in support of the prayers in the present application can be summarised as follows:-
 - a. The applicant is the registered owner of the property known as LR.No.Transmara/Kimintet “D”/1681 (hereinafter referred to as the “the suit property”).
 - b. The applicant is in occupation and/or possession of the suit property with his family.
 - c. For unknown reasons and without any justification, the 1st to 3rd Respondents have trespassed into the suit property and started to alienate the same to third parties thereby interfering with the Applicants ownership rights and/or occupation.
 - d. The Applicant has since written a formal complaint to the 4th and 5th Respondents informing them of the illegal and unlawful acts of the 1st to 3rd Respondents but no response was received thereof.
 - e. Instead, the Respondents have continued to unlawfully enter the suit property and undertaken various demarcation processes including placing of beacons.
 - f. The Applicant is therefore apprehensive that the suit property may likely be unlawfully interfered with and/or alienated to third parties thereby causing him irreparable loss and harm.
 - g. It is only fair and just that the prayer for a temporary injunction be granted to preserve the suit property pending the hearing and determination of the substantive suit.
4. The present Application was duly served on the Respondents and the 1st to 3rd Respondents filed their grounds of opposition on the 20th of February 2023.



5. The 1st to 3rd respondents opposed the present application on the following grounds; -
 - a. The applicant’s suit property is subject to and still under adjudication within Kimintet “E” & “F” Adjudication Sections.
 - b. The present suit as well as the present Application have been filed without consent of the Land Adjudication officer contrary to the provisions of section 30 of the *Land Adjudication Act*, Cap 284.
 - c. The present Application concerns a boundary which is yet to be established and therefore any orders of injunction will affect the ownership rights of other parties.
 - d. The Applicant has not established any prima facie case which would warrant the issuance of an injunction as sought in the present application.
 - e. Similarly, the Applicant has not outlined any loss or injury that he may suffer if the present application is not granted.
6. The 4th and 5th Respondents unfortunately did not file any response to the present Application despite service.
7. The application was then canvassed by way of written submissions with the Applicant filing his submissions on the 13th of July 2023 while the 1st to 3rd Respondents filed their submissions on the 20th of September 2023.
8. The issues for determination in the present Application are as follows; -

Issue No.1- Whether or not the Applicant is entitled to a Temporary Injunction as prayed?

Issue No. 2- Who bears the costs of the Present Application?
9. The issues for determination having been duly outlined hereinabove, the same will now be discussed hereinbelow.

Issue No.1- Whether or not the Applicant is entitled to a Temporary Injunction as prayed?

10. In the case of *Giella v Cassman Brown* (1973) 358 and the Kenyan Case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No S77 of 2012 (2014) eKLR, the principles of granting an injunction were pronounced as follows;-

“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, if 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 states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”

11. Beginning with the first principle, an Applicant must first establish a prima facie case against the Respondents.



12. According to the determination in the case of *Mrao Ltd v First American Bank of Kenya Ltd* (2003) eKLR the description of a *prima facie* case was pronounced as follows; -

“... 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.”

13. In the present Application, the Applicant has approached this Honourable Court as the registered and beneficial owner of the suit property.

14. To confirm this position, the Applicant has presented before this Honourable Court a copy of the title document in his name.

15. All the Respondents have not disputed the validity of the Title Document presented by the Applicant.

16. Based on the title document to the suit property, the Applicant has alleged unlawful interference, alienation, affixing of boundaries and/or tempering with his possession without any justifications by the Respondents jointly and severally.

17. The only response received by this Honourable Court is through the Grounds of Opposition by the 1st to 3rd Defendants who allege that the suit property is still under adjudication under Kimintet “E” and “F” Adjudication Sections.

18. In essence therefore, the Applicant cannot approach this Honourable Court for any reliefs and/or hearing of disputes without the express authority of the Land Adjudication officer handling those Adjudication Sections as provided for under section 30 of the *Land Adjudication Act*, cap 284.

19. The question to be asked therefore is whether the suit property is still under adjudication within Kimintet “E” and “F” or not?

20. According to the title deed presented before this Honourable Court, the suit property is private property having been registered in favour of the Applicant on the July 24, 2020 as per the official search-dated January 26, 2023.

21. In essence therefore, the suit property cannot be part of any further adjudication within Kimintet “E” Or “F” Adjudication Sections.

22. In effect therefore, the Applicant has indeed established a right which is being threatened by the activities of the Respondents through the purported adjudication of the suit property under Kimintet “E” and “F” Adjudication Sections.

23. In other words, the Applicant has established a *prima facie* case against the Respondents as envisaged in law.

24. The second principle is that of irreparable loss and/or injury if the said injunction is not granted.

25. In another case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR, the Court described irreparable loss and injury as follows;-

“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.

26. In the present Application, the Applicant is of the view that the illegal trespass, beaconing and purported alienation of the suit property under the adjudication of Kimintet “E” and “F” Adjudication Sections will not only interfere with his possession and/or occupation of the suit property but also extinguish his ownership rights over the said suit property and thereby result to irreparable loss and harm.
27. It is indeed true that the actions of the Respondents to demarcate, beacon and/or alienate the Applicants suit property under adjudication exercise of Kimintet “E” and “F” would in fact extinguish his ownership rights of the suit property.
28. The issuance of any new Adjudication Records by the 4th and 5th Respondents over land which is part of the suit property to third parties would cause irreparable harm and injury as those portions the suit property adjudicated as Kimintet “E” and “F” Adjudication Sections would be deemed to be Government land which has been alienated to third parties and the Applicants rights over such portions extinguished.
29. Consequently therefore, this Honourable Court is indeed satisfied that the Applicant will suffer irreparable loss and harm if the actions of the Respondents jointly and severally are not injunction as prayed.
30. The last principle is if the Honourable Court is in doubt of the two above principles, then the Honourable Court should decide the application on a probability of convenience.
31. Luckily, in this present Application, there is no doubt as to the second principle and the balance of convenience tilts in favour of the Applicant.

Conclusion

32. In conclusion therefore, this Honourable Court hereby makes the following orders as appertains the Notice of Motion Application dated 2nd February 2023;-
 - A. The notice of motion application Dated February 2, 2023 is merited.
 - B. That Pending the hearing and determination of this suit, the 1st, 2nd, 3rd, 4th and 5th respondents are hereby restrained by way of a temporary injunction through themselves, their agents, servants and/or employees from entering, alienating, selling, transferring, leasing, disposing and/or interfering in any manner whatsoever with the suit property known as L.R.No.Transmara/Kimintet “D”/1681.
 - C. The 4th and 5th respondents herein are further ordered by through a prohibitory injunction from altering, changing, moving, resurveying and/or in any manner whatsoever tempering with the mutation and/or boundary features of the property known as LR.No.Transmara/ Kimintet “D”/1681 Pending The Hearing And Determination Of This Suit.
 - D. Costs of this application will be borne by the respondents herein.

DATED, SIGNED & DELIVERED VIRTUALLY IN MILIMANI LAW COURTS’ ON 16TH NOVEMBER 2023.

EMMANUEL M.WASHE

JUDGE



IN THE PRESENCE OF:

COURT ASSISTANT: Mr. Brian

ADVOCATE FOR THE APPLICANT: M/s Cherotich

ADVOCATE FOR THE RESPONDENTS: N/A`

