



Magari v Nairobi City County Government & another (Environment & Land Case E023 of 2024) [2025] KEELC 3489 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3489 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E023 OF 2024**

**AA OMOLLO, J
APRIL 30, 2025**

BETWEEN

JOSEPHINE WAIRIMU MAGARI PLAINTIFF

AND

NAIROBI CITY COUNTY GOVERNMENT 1ST DEFENDANT

**NAIROBI CITY COUNTY PHYSICAL AND LAND USE
PLANNING 2ND DEFENDANT**

RULING

1. The present application is taken out by the plaintiff/Applicant while relying on the provision of order 40 of the Civil Procedure Rules, Sections 1A, 1B & 3A of the Civil Procedure Act and articles 159 and 162 of the Constitution in seeking for the orders:
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to issue urgent Temporary orders restraining the defendants jointly whether by itself, its governor, county executive members, agents, servants, employees, associates from demolishing or in any way interfering with LR No. 7747/1 Mokoyet West Road, Karen and its structures pending hearing and determination of the Application and/or the suit.
 4. That in the alternative of prayer 2 and 3 above, this court be pleased to issue Status Quo Order urgently to preserve the status of LR No. 7747/1 Mokoyet West Road, Karen pending hearing of this Application and suit.



5. That the Court do make an order restraining the OCS Langata from supervising the execution of the Enforcement Notice dated 11th December, 2024 effective on 25th December 2024 by the 2nd Defendant urgently pending the hearing and determination of the Application and/or suit.
 6. That the costs of this application be provided.
2. The application is premised on the grounds stated on the face of the motion thus;
1. That the 2nd Defendant issued an Enforcement Notice dated 11th December, 2024 and will be effective on 25th December, 2024 removing the Applicants legal structures which has been leased by approximately one Hundred (100) business men and women who do business and earn a living from the leased premises after the 2nd Defendant approved change of user and a result, the Applicant has been conducting business on LR No. 7747/1 Mokoyet West Road, Karen for the past 25 years.
 2. That if stay of execution of the Enforcement Notice by the 2nd Defendant is not granted as a matter of urgency and necessity, the Enforcement Notice will be implemented to the detriment of the Applicant who is the Registered Owner LR No. 7747/1 Mokoyet West Road, Karen and who has been conducting Business and development the same for over a period of Twenty-five years (25) years and it is her home.
 3. That further, if stay of execution of an Enforcement Notice is not granted urgently, the Applicants stands to suffer irreparable damages and many occupants carrying out various business will be affected.
 4. That there has been no delay in filing this Application and/or the suit in this Honourable Court.
 5. That the Applicant undertakes to abide with any other conditions and directions in respect of stay orders.
3. The application was further supported by three affidavits sworn by the applicant dated 20th December, 2024 and 3rd February, 2025.
4. The application is opposed by both the Defendants and the interested party via their respective replying affidavits. The defendants' affidavit in reply was sworn by Mr. Patrick Analo Akivaga dated 30th January, 2025. He deposes that the plaintiff erected structures on her premises without taking/obtaining the requisite approvals from the County Government of Nairobi. Hence, the business being run in the said premises are illegal and unlawful.
5. He also deposes that the structures have no running water further exuberating health risks sanitation concerns. The Defendants aver that the operation of garages within the said structures poses significant fire hazards due to handling of flammable substances. In addition, that they have the legal mandate to ensure proper urban planning enforcement action against illegal developments to prevent haphazard and hazardous construction within its jurisdiction. They contend this application is an attempt to circumvent the legal procedures governing planning and development control. It is also their assertion that the illegal structures should be demolished.
6. The interested party in opposing the granting of the injunction sought deposes inter alia that;
- i. That over time, there has been construction of illegal structures along Mokoyeti East and Mokoyeti West Roads which pose serious safety and environmental hazards to the members of



the applicant as exhibited in annexure marked KK-2 showing photographs of the structures constructed by the plaintiff herein.

- ii. That the Applicant has severally protested against the illegal structures by making reports to the relevant authorities vide various correspondence annexed as KK-3 to the replying affidavit.
- iii. That the issues in the suit directly affect the members of the applicant and any orders made in the suit will affect them hence the need to join them as parties to the suit.

Analysis and Determination:

7. I have read and considered the submissions filed for and against the grant of the order of temporary injunction sought in the application. In explaining why she approached this court, the Applicant submitted that she lodged an appeal on 17th December, 2024 with the Nairobi City County Liaison Committee but the same was neglected.
8. The Defendants have relied on the provisions of section 72(3) of PLUPA to state that the Applicant should only come to this court by way of an appeal from the decision of the Liaison Committee. It is their argument that unless the plaintiff demonstrate that the Liaison Committee is not operational or has failed to act, this court lacks jurisdiction to entertain this claim.
9. The defendants acknowledge the existence of the letter lodged with its Physical Planning Liaison Committee. The Applicant have deposed that their letter/appeal was not acted upon. Hence the burden shifts on the Respondents to demonstrate that indeed the Liaison Committee holds daily/weekly sittings thus this suit is premature. They ought to show for instance the date set for the hearing of the Applicant's appeal. The argument that it was the duty of the Applicant to follow up on her appeal goes to explain the inadequacy of the alternative dispute resolution mechanism to offer immediate remedy. In view of the circumstances of this application, I find the Applicant did not err in moving this court to seek protection of her property pending determination of merits of her suit.
10. On the merits of the application, the Applicant had an obligation to demonstrate a prima facie case, evidence of irreparable loss and on whose side the balance of convenience tilts. In the case of *Kibutiri... Vs...Kenya Shell*, Nairobi High Court, Civil Case No.3398 of 1980 (1981) KLR, the Court held that:-

“The conditions for granting a temporary injunction in East Africa are well known and these are: First, the Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which might not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience. See also *E.A Industries ..Vs..Trufoods* (1972) EA 420.”
11. From the pleadings, it is evident that there are structures built/existing on the suit premises. This is corroborated by interested party who annexed pictures of the various business going on and the Defendants deposition that the structures are illegal as they were developed without approvals. The enforcement notice was issued based on the allegations of the illegalities of the impugned structures with the aim of issuing the enforcement notice to have the plaintiff to demolish the said structures.
12. In showing that she has a prima facie case, the Applicant deposes that she had obtained change of user approval to conduct commercial business in the suit property. She also pleaded that the notice served was also too short. Thus, the suit raises the question for determination inter alia, whether there was approval for the impugned structures or not and if the notice served is short.



13. On the question of irreparable loss, the Applicant has pleaded that her right to use and earn a living from her property will be violated. That demolition of the impugned structures is likely to cause her and her tenants' loss of income which cannot be compensated in damages. Loss of income before ascertaining the value of properties on the suit property whether they are illegal or otherwise as expressed by the short enforcement notice may be irreparable.
14. The structures seems to have been in the suit premises for a while and the Defendants did not explain the rush in issuing the enforcement notice instead of giving the Applicant sufficient notice to remove them if they were illegal. Consequently, the balance of convenience is to maintain the statusquo pending hearing and determination of the suit. The purpose of granting an injunction is set out in Order 40 Rule 1(a) of the Civil Procedure Rules which provides: -
 1. Where in any suit it is proved by affidavit or otherwise—
 - (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - (b) ... the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
15. In conclusion, I find the application is merited and grant the same in terms of prayer 2, 5 and 6 of the motion pending hearing and determination of the suit.

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

A. OMOLLO

JUDGE

