



Kenya Farmers' Association Limited v National Land Commission & 2 others (Environment & Land Case E008 of 2023) [2023] KEELC 21503 (KLR) (14 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21503 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E008 OF 2023
DO OHUNGO, J
NOVEMBER 14, 2023**

BETWEEN

KENYA FARMERS' ASSOCIATION LIMITED PLAINTIFF

AND

NATIONAL LAND COMMISSION 1ST DEFENDANT

DISTRICT LAND REGISTRAR, KAKAMEGA 2ND DEFENDANT

JAMES MACHARIA GITU 3RD DEFENDANT

RULING

1. The plaintiff moved the court through plaint dated 22nd August 2023 in which it averred that it held a leasehold title in respect of the parcel of land known as Kakamega Town/Block III/28 (the suit property) for a term of 33 years from 1973, which term expired around the year 2006. That it instructed an advocate in the year 2022 to commence the process of renewal of the lease and that the first and third defendants fraudulently and illegally allocated the suit property to the third defendant.
2. The plaintiff therefore prayed for judgment against the defendants for inter alia declarations that the allocation and subsequent registration of the third defendant was fraudulent, cancellation of the registration and a permanent injunction restraining the defendants from dealing with the suit property. Simultaneously with the plaint, the plaintiff filed Notice of Motion dated 22nd August 2023, which is the subject of this ruling.
3. The following orders are sought in the application:
 1. [Spent]
 2. [Spent]



3. That this Honourable be pleased to issue a temporary injunction restraining the Defendant whether by himself, his employees, servants, agents, or otherwise howsoever from entering, occupying, charging, carrying on any development, or dealing with all that parcel of land known as Kakamega Town/Block III/28 in any manner prejudicial to the interests of the Plaintiff pending the hearing and determination of this suit.
 4. That the Officer Commanding Station (OCS) Kakamega Central Police Station do supervise the peaceful execution and compliance of this order.
 5. That the costs of this application be borne by the Defendant.
4. The application is supported by a supporting affidavit and supplementary affidavit both sworn by Symon C. Cherogony, the plaintiff's Managing Director. He reiterated the position in the plaint and added that the plaintiff continued in possession of the suit property and payment of rates even after the expiry. That the first and second defendants did not give the plaintiff the first right of refusal to renew the lease and that the third defendant had started depositing construction material on the suit property. He annexed, among others, copies of certificate of lease in the plaintiff's name dated 10th January 1986, certificate of official search as on 21st November 2022, rates payment documents, letter dated 10th August 2023 from S M Omae & Co Advocates and some photographs. He further stated that the third defendant attempted to take possession of the suit property on 19th August 2023 using orders obtained through misrepresentation in Kakamega CM ELC No. 182 of 2023.
 5. The third defendant opposed the application through a replying affidavit in which he deposed that the plaintiff had not been in possession of the suit property and that the plaintiff was guilty of laches for failing to renew the lease on time. That the plaintiff did not demonstrate that it complied with the requirement to develop the suit property within two years of issuance the certificate of lease. He added that he was allocated the suit property procedurally after being issued with an allotment letter. Among other documents, he annexed copies of letter of allotment dated 3rd July 1998, certificate of lease in his name dated 31st May 2023 and certificate of official search as on 30th June 2023.
 6. The first defendant opposed the application through a replying affidavit sworn by Brian Ikol, its Deputy Director of Legal Affairs and Dispute Resolution. He deposed that the plaintiff never made an application for renewal of the lease and is guilty of inordinate delay of seventeen years.
 7. Counsel for the second defendant indicated to the court that the second defendant had no interest in the application and would not participate in its hearing.
 8. The application was canvassed through written submissions which both the plaintiff and the third defendant filed. The first defendant relied entirely on the above replying affidavit of Brian Ikol.
 9. I have considered the application, the affidavits, and the parties' submissions. The sole issue for determination is whether the orders sought should issue.
 10. The plaintiff is seeking an interlocutory injunction. The principles applicable to such an application are that the applicant must establish a prima facie case with a probability of success. Even if it succeeds on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the court is in doubt as to whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience. All these conditions and stages are to be applied as separate, distinct, and logical hurdles which the applicant is expected to surmount sequentially. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. See *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.



11. There is no dispute that the plaintiff held a leasehold title in respect of the suit property for a term of 33 years running from 1st March 1973. Thus, the term expired on or about 1st March 2006. The plaintiff contends that it is still in possession and that it started the process of renewal of the lease in the year 2022. Among other documents, it annexed a copy of a certificate of official search as on 21st November 2022 which indicated that it was the registered proprietor.
12. On the other hand, the third defendant contends that an allotment letter was issued to him in respect of the suit property on 3rd July 1998. I note that as of that date, the term of the plaintiff's lease had not expired. The third defendant has also annexed a copy of a certificate of lease in its name dated 31st May 2023 with a term of 99 years from 1st July 1998. Similarly, the term of the plaintiff's lease had not expired by 1st July 1998. Additionally, third defendant also availed a copy of an inspection report dated 31st May 2023 and signed by the County Land Administration Officer. A perusal of the said report shows that the suit property was fenced using an iron sheet fence and iron sheet gate. Going by the inspection date which is the same as the date of the third defendant's title, it seems to me that the plaintiff was in possession.
13. In view of the foregoing, I am persuaded that the plaintiff has established a prima facie case with a probability of success. Since the dispute concerns ownership of land, I do not think that damages would be an adequate remedy. There is need to preserve the suit property pending determination of the suit.
14. I find merit in prayer 3 of the application. To ensure that the suit is expeditiously heard and determined, I will limit the lifespan of the injunction. As regards prayer 4, I am not persuaded that there is any valid reason for involving the police in a purely civil process. See *Kamau Mucuba v Ripples Ltd* [1993] eKLR. I must emphasise that injunction orders are fully addressed by the *Civil Procedure Act* and rules made thereunder, complete with ample provisions for enforcement.
15. In the result, I make the following orders:
 - a. An injunction is hereby issued restraining the third defendant whether by himself, his employees, servants, agents, or otherwise howsoever from entering, occupying, charging, carrying on any development, or dealing with all that parcel of land known as Kakamega Town/Block III/28 in any manner prejudicial to the interests of the plaintiff pending the hearing and determination of this suit.
 - b. The orders in (a) above shall lapse after 1 (one) year from the date of this ruling, unless otherwise extended by the court.
 - c. The plaintiff shall have costs of Notice of Motion dated 22nd August 2023.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 14TH DAY OF NOVEMBER 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Ratemo for the Plaintiff

Ms Mohammed for the first Defendant

No appearance for the second Defendant

Mr Abok for the third Defendant

Court Assistant: E. Juma

