



**Nyambura & another v Mwangi (Environment & Land Case  
E082 of 2023) [2023] KEELC 22456 (KLR) (22 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22456 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E082 OF 2023  
MD MWANGI, J  
DECEMBER 22, 2023**

**BETWEEN**

**PETER NDERI NYAMBURA ..... 1<sup>ST</sup> PLAINTIFF**

**OMAR MOHAMED OMAR ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**STEPHEN MWAURA MWANGI ..... DEFENDANT**

**RULING**

(In respect of the Plaintiffs' Notice of Motion application dated the 8th November, 2023 seeking restraining orders to bar the Defendant from transferring, alienating, advertising, selling, trespassing or in any other way interfering with the suit property pending the hearing and determination of the suit)

**Background**

1. The Plaintiffs have moved the court by way of the Notice of Motion dated 8th November, 2023 brought under Order 51 Rule 1 of the *Civil Procedure Rules* and Section 3A of the *Civil Procedure Act* seeking the following orders: -
  - a. Spent
  - b. Spent
  - c. That the Honorable Court does issue an order restraining the Defendant/Respondent herein by himself, his officers, servants, agents, and/or anyone acting on his behalf from transferring, alienating, advertising, selling, trespassing or in any other way interfering with the property known as Land Reference Number 209/10861 pending the hearing and determination of the suit filed herewith.



- d. That Officer Commanding Station (OCS), Industrial Area ensures compliance with the orders issued herein.
  - e. That the costs of this application be borne by the Defendant.
2. The application is premised on the grounds on the face of it and the Supporting Affidavit of Peter Nderi Nyambura, the 1<sup>st</sup> Plaintiff/Applicant deposed on the 8th November, 2023. The Applicants' case is that they are the duly registered proprietors of Land Reference No. 209/10861, 'hereinafter referred to as the suit property'. They have attached a copy of the Certificate of Lease as an annexure to their application.
  3. The 1st Applicant avers that while conducting a routine site visit on the suit property sometime back in 2023, he was denied entry into the suit property by unknown men on the basis that they owned the land. He avers that he only came to learn later learnt that the Defendant had at unknown times wrongfully entered and illegally taken possession of the suit property, remained in such illegal possession and illegally authorized a stranger to gain entry into part of the land where she has been parking her motor vehicles.
  4. The Plaintiffs assert that they issued the Defendant with a demand to vacate and notice of intention to sue but the Defendant/Respondent has remained adamant hence the instant suit and application for injunctive reliefs against the Defendant and or his agents.
  5. The Application by the Plaintiffs was opposed by the Defendant/Respondent by way of a Replying Affidavit sworn by one, Stephen Mwaura Mwangi.

### **Replying Affidavit**

6. The Defendant/Respondent avers that he is the beneficial owner of all that parcel of land being Land Reference No. 209/10861 on Land Survey Plan Number 209445, having purchased it from one Mbiu Kimani, whom he had known for more than 13 years. He has attached a copy of a Sale Agreement confirming the same.
7. The Defendant states that in compliance with the said purchase agreement, the Vendor had already handed to him the original title and all completion documents for purposes of effecting the transfer into his name. He avers that he had initiated the transfer process but due to lack of finances and the cost implications crippled his desire to have the subject premise registered in his name.
8. He asserts that notwithstanding the non-registration of the title into his name, he has enjoyed quiet possession of the land from the year 2010 when he purchased it. He has since rented the property to one Jackline pursuant to a Lease Agreement duly executed by the tenant and himself. The Tenancy was extended for three years through an agreement dated 11<sup>th</sup> April 2023.
9. The Defendant states that the Tenant has all along enjoyed quiet possession for over 13 years and has dutifully paid rent. The tenant ha been using the premises for the purpose of basic repairs of commercial tracks.
10. The Defendant avers that upon perusal of the Certificate of Title annexed to the application and Survey Plan, he noted that although the Land Reference Number being LR No. 209/10861 is similar to his, the Survey Plan Number and the IR Number appearing on the Plaintiffs' title is at variance with what appears on his title.
11. He further informs the court that his title document shows that the property was previously issued by the state to one Chamkour Singh Panesar, Mohan Singh Panesar and Amritpal Singh Panesar on



1st June, 1994. The Plaintiffs' title on the other hand shows that the property was issued to them on 1st June, 1994.

12. The deponent asserts that he has been in total control of the suit property for more than 13 years without interruption which has seen him rent/lease the same to his tenants for all those years. The tenant has invested heavily on construction of the premises and installed machineries thereto. Therefore, granting the orders sought will occasion great prejudice and loss that cannot be compensated by an award of damages. The application should therefore be dismissed with costs.

### **Plaintiffs'/Applicants' Supplementary Affidavit**

13. The Plaintiffs filed a Supplementary Affidavit sworn by Peter Nderi Nyambura on the 27th November, 2023. He avers that the purported Agreement for Sale dated the 11th August, 2010 between the Defendant and one Mbiu Kimani in respect of the suit property is a forgery and the Defendant herein prepared the Advocate's Stamp as an afterthought.
14. The Applicants argue that the suit property was never at any point owned by the said Mbiu Kimani and he could not therefore transfer an interest in the property. Further that there is no acknowledgement of receipt of the purchase price by the said Mbiu Kimani.
15. In addition, although Paragraph 6 of the Agreement shows that the Vendor executed all the transfer documents in favour of the Purchaser, no such transfer documents have been attached to demonstrate that they indeed exist.
16. Furthermore, the Agreement is purportedly attested by an Advocate whose records do not exist on the Law Society of Kenya Database.
17. The deponent further states that although the Defendant/Respondent alleges that he was unable to complete the transfer process due to financial challenges, the allegation is a contradiction, in that from the purported Lease Agreement, the Tenant pays a monthly rent of Kshs. 200,000/=. The Defendant cannot not therefore claim to have financial challenges.
18. The Plaintiffs further faults the Defendant for failing to adduce evidence proving that one Jackline Mburia has been a tenant for more than 13 years. The attached Tenancy Agreement shows that the tenancy was renewed on 11th April, 2023. The Defendant has equally not attached proof of receipt of rent from the tenant. It follows therefore that the Defendant has only been in possession this year just before the Plaintiffs filed this suit.
19. On the alleged prejudice to be suffered by the purported Tenant, the Plaintiffs aver that the Defendant cannot purport to speak on her behalf yet she opted out of proceedings. The application should therefore be allowed as prayed.

### **Court's Directions**

20. With the agreement of the parties, the court directed that the application be dispensed with by way of written submissions. Both parties complied. The Plaintiffs' submissions are dated 30th November, 2023 whereas the Defendant's submissions are dated 4th November, 2023. Parties further highlighted their submissions before the court on 7th December, 2023. The written submissions filed by the parties and the proceedings of 7th December, 2023 form part of the record of this court.

### **Issues for determination**

21. I have carefully read and considered the application, the rival affidavits and submissions made by the parties herein. The issues for determination are:



- a. Whether the Plaintiffs' application has met the threshold for the grant of temporary orders of injunction sought.
- b. Which orders should the court issue?

### **Analysis and Determination**

22. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the decision of *Giella v Cassman Brown* (1973) EA 358. This position has been reiterated in numerous pronouncements from courts and more particularly in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that:

“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, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest 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”.

23. Consequently, the Plaintiff ought to, first, establish a prima facie case. The plaintiff/Applicant submitted that they have established a prima facie case and relied on the decision of *Mrao Ltd v First American Bank of Kenya Ltd* (2003) eKLR in which the Court of Appeal defined a prima facie case. The court stated that:

“... 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.”

24. In support of their application, the Plaintiffs have adduced a Certificate of Title to demonstrate ownership of contested parcel of land.

25. Secondly, an Applicant has to demonstrate that irreparable injury will be occasioned to him if the order of temporary injunction is not granted. The decision in *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR provides an explanation for what is meant by irreparable injury. t states that:

“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. On the irreparable injury, it is common ground that the Defendant has leased out the suit premises to a 3rd Party who is currently operating a business on the suit property. The Plaintiffs contention is that the Defendant has illegally leased out the suit property yet he is not the registered proprietor. The Plaintiffs contend that the Defendant has therefore introduced a 3rd party to the proceedings thus convoluting the matter to their detriment of the Plaintiffs. This is the irreparable injury the Plaintiffs aver they will suffer.



27. The Defendant on the other hand contents that he has been in possession of the suit property for more than 13 years. He has attached a Lease Agreement dated 11th April, 2023 with Expeditors International Limited, for a term of 3 years at a monthly rent of Kshs. 200,000/=.
28. Evidently, the Defendant/Respondent is already in occupation. Issuing the injunctive orders as sought at this point in time will therefore amount to evicting him without according him a chance to have his case determined on its merits. The balance of convenience therefore tilts in favour of the Defendant in not granting the injunction. The apprehended injury by the Plaintiffs can be compensated by way of damages. In the circumstances the Court is not satisfied that the Plaintiffs/Applicants has met the threshold for the grant of an interlocutory injunction.
29. It is settled law that the court may grant an order for the maintenance of status quo over the property in question until the suit is heard and determined or terminated. The status quo orders can be made by the court on its own motion in exercise of its general jurisdiction.
30. The *Black's Law Dictionary*, Butter Worths 9<sup>th</sup> Edition, defines Status Quo as a Latin word which means "the situation as it exists".
31. The purpose of an order of status quo as elaborated by Odunga J (as he then was) in the case of *Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another* [2013] eKLR, Odunga J state,
- "When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario..."
32. In *TSS Spinning & Weaving; Company Ltd v NIC Bank Limited & Another* [2020] eKLR, the court unpacked the purpose of a status quo order as follows:
- "In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention."
33. In *Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another* [2020] eKLR, the purpose of a status quo order was explained as follows:
- "..... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision."
34. In this matter, considering the affidavit evidence adduced by parties and the circumstances of the case, this court is of the view that it is in the interest of justice that the suit property be preserved by a status quo order.
35. In the obtaining scenario, it is the finding of this court that a status quo order is merited to preserve the suit property. Accordingly, a status quo order is hereby issued; The Defendant shall remain in possession of the suit but is barred from transferring, alienating, advertising, selling, charging/



mortgaging or in any other way disposing the property known as Land Reference Number 209/10861 pending the hearing and determination of the suit.

36. Expeditors International Limited who is allegedly a tenant in the suit property shall be joined into this case as an interested party. The costs of the application shall be in the cause.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22<sup>ND</sup> DAY  
DECEMBER, 2023.**

**M. D. MWANGI**

**JUDGE.**

In the virtual presence of:

Mr. Ikuu for the Plaintiffs/Applicants

N/A for the Respondent

Yvette, Court Assistant.

**M. D. MWANGI**

**JUDGE.**

