



**Park Road Nursing Home v National Land Commission of Kenya; Nairobi
North Healthcare Limited (Interested Party) (Environment & Land Case
E010 of 2023) [2023] KEELC 22354 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E010 OF 2023
MD MWANGI, J
DECEMBER 20, 2023
IN THE MATTER OF: L.R. NO. 209/3530/8 (I.R. NO. 7702/8)**

BETWEEN

PARK ROAD NURSING HOME APPLICANT

AND

THE NATIONAL LAND COMMISSION OF KENYA RESPONDENT

AND

NAIROBI NORTH HEALTHCARE LIMITED INTERESTED PARTY

*(In respect of the Plaintiff's Notice of Motion application dated the 25th
September, 2023 seeking a temporary injunction order against the Interested Party)*

RULING

Background

1. The Plaintiff's Application is dated 25th September, 2023 and is expressed to be made under Sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act* and Order 1 Rule 10, Order 40 Rules 1 & 2 & Order 51 Rule 1 of the Civil Procedure Rules. The Applicant seeks amongst other orders; joinder of the Interested Party as such as well as leave to amend the Originating Summons and file a Further List Documents.
2. By Consent of the parties, the Interested Party was joined as such on 12th October, 2023 and leave to amend the Originating Summons granted. Consequently, the only substantive prayer pending for determination is prayer Number (d) therein seeking the following orders:



- ‘d. That this Honourable Court be pleased to issue a temporary injunction against the Interested Party by itself, its agents, servants and or assigns or howsoever from trespassing upon dealing with or in any manner whatsoever interfering with the Applicant’s quiet and peaceful possession and occupation of Land Reference Number 209/3530/8 (I.R. No. 7702/8) commonly known as Park Road Nursing Home pending the hearing and determination of this suit.’
3. The application is premised on the grounds on the face of it and the Supporting Affidavit of Pravin Jivanlal Patel, the Plaintiff/Applicant’s Manager since 1993 to date deposed on the 25th September, 2023. The deponent avers that upon the Applicant filing the Originating Summons, the Interested Party emerged, claiming that it was the current registered proprietor of the suit property pursuant to an alleged Certificate of Title issued to it in June, 2023.
 4. It is the Applicant’s case that the document alleged to be a Certificate of Title of the suit property is a product of fraud and criminality on the part of the Interested Party and corrupt officials at the National Land Commission, the Defendant herein.
 5. The deponent argues that the Interested Party has no history nor connection with the suit property and has appeared out of nowhere to claim a property whose lease has expired and in which, ordinarily, the first party in priority for consideration for the purposes of allocation would be the party in actual possession and occupation of the property. The Applicant faults the manner in which the Interested Party acquired the Certificate of Title as unprocedural, irregular and tainted with illegality; therefore fraudulent, null and void.
 6. The Applicant states that the Interested Party has threatened to evict it from the suit premises and has demonstrated that it intends to do so notwithstanding the illegality of alleged deed of ownership. The deponent of the supporting affidavit avers that if the Interested Party actualizes its threats, this suit will be rendered nugatory and of no consequence at all.
 7. The Applicant asserts that it runs a hospital with patients and any disruption may lead to deaths or permanent injury to the patients being treated therein.
 8. The deponent contends that the Applicant has been in actual, physical and continuous occupation of the suit property for at least 30 years running a hospital accessible to the marginalized members of the society. He states that no prejudice will be occasioned to the Interested Party by the issuance of these orders. The Applicant urges the court to grant the prayers sought in the application.

Interested Party’s Replying Affidavit

9. The Interested Party opposed the application through the Replying Affidavit of Maina Chege, the Managing Director of the Interested Party, deposed on 1st November, 2023. The deponent avers that the injunctive orders sought by the Applicant are unfounded, unjust and will only serve to unfairly prejudice the Interested Party’s interests in this matter.
10. He avers that the Interested Party’s involvement in the suit is not random as alleged. He asserts that the Interested Party is the legal registered proprietor of the suit property having been issued with a Certificate of Leased dated 17th May, 2023.
11. The deponent asserts that the Applicant’s premises on which the Medical facility operates is Plot No. 209/7580 Ngara Park Road, which is completely different from the subject property which is LR No. Nairobi/ Block 40/497 (formerly 209/3530 /8 Nairobi). There is therefore no threat of disruption



of the Applicant's medical facility unless the Applicant gave false or misleading information while registering the medical facility.

12. He avers that the court cannot therefore entertain the Applicant's illegalities on the mere fact that it is a medical facility.
13. He argues that the Applicant has been nothing more than a mere tenant in the property for all the time it has allegedly been in occupation. He alleges that this is evident from the proceedings in BPRT No. 785 of 2009; Park Road Nursing Home Limited –vs- Bhupinderkaur Walia, in which the Tribunal set the rent payable over the suit property at Kshs. 20,000/=. The proceedings therein are still ongoing. The Applicant is therefore abusing court processes by asserting proprietary interests over the suit property while at the same time seeking protection as a tenant under the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*. A tenant cannot claim adverse possession over a property as their occupation has been legally consented to.
14. The deponent avers that the orders sought amounts to an abuse of court process and which will substantially prejudice the interests of the Interested Party over the suit property. The application should therefore be disallowed.

Applicant's Supplementary Affidavit

15. The Plaintiff/Applicant filed a supplementary deponed on the 15th November, 2023 sworn by Pravin Jivanlal Patel. The deponent denies the allegations raised in the Replying Affidavit by the Interested Party. He reiterates that the Applicant stands to suffer irreparable harm due to the interference on the suit property by the Interested Party.
16. He asserts that the Applicant has established a strong case for granting of temporary injunction in its favour.

Court's directions

17. The Court directed that the application be canvassed by way of written submissions. Considering the urgency and the nature of the application, parties were to highlight submissions. The Interested Party did not file its submissions as directed.
18. The Plaintiff/Applicant on the other hand complied and filed its submissions dated 15th November, 2023 which the court has considered and which submissions form part of the court record.

Issues for determination

19. Having read the application, the affidavits in support of the application, the replying affidavit and the submissions by the Plaintiff/Applicant, the issues for determination are as follows:
 - a. Whether the Plaintiff/Applicant has met the threshold for the grant of temporary orders of injunction sought.
 - b. Who shall bear the costs of the application?



Analysis and determination

A. Whether the Plaintiff has met the threshold for the grant of temporary orders of injunction sought

20. The important consideration before granting a temporary injunction under order 40 Rule 1 of the Civil Procedure Rules is the proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property. The court is in such a situation enjoined to grant a temporary injunction to restrain such acts. In the instant case, the major contention by the Applicant is that it has been in continuous and uninterrupted occupation of the suit property for over 30 years and that it is apprehensive that the Interested Party may evict or interfere with its medical facility operating on the suit property.
21. The question which therefore arises is whether the application meets the threshold set for the granting of orders of temporary injunction.
22. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella -vs- Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions from the courts and more particularly in the case of *Nguruman Limited versus 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. In *Mrao Ltd –vs- First American Bank of Kenya and 2 others*, (2003) KLR 125 which was cited with approval in *Moses C. Muhia Njoroge & 2 Others -vs- Jane W Lesaloi and 5 others*, (2014) eKLR, the Court of Appeal defined a prima facie case as: -

“A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later”.
24. The Applicant avers that it has proprietary interests on the suit property by virtues of being in occupation for more than 30 years. Its claim is therefore for adverse possession against the Respondent, a government entity. The Interested Party on the other hand has adduced a Certificate of Lease as proof that it is the registered proprietor of the suit property. The Applicant accuse the Interested Party of fraudulently acquiring the alleged title to the suit property. The Interested Party in response states that its property is different from what the applicant claims. There is need for an explanation or rebuttal through a full hearing.
25. Considering that the matter is at an interlocutory stage and the risk of delving into the merits of the case before trial, the court will be frugal with its words at this point.



26. The order of temporary injunction however, is being sought against an interested party. The question in my mind is whether a substantive order can be sought by or against an interested party.
27. The decision of the Supreme Court of Kenya in the case of *Methodist Church in Kenya v Mohammed Fugicha & 3 others* [2019] eKLR where it cited the *Murautetu* case provides the answer to the question. The court held that:
- “.... in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues or introduce new issues for determination by the Court.”
28. I find it untenable inappropriate to issue an order of temporary injunction against the Interested Party in this case.

B. Which orders should the court issue in the circumstances of this case?

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 9th 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 –vs- National Environment Tribunal, Ex-parte Palm Homes Limited & Another* [2013] e KLR, where he stated that,
- “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 –vs- 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) –vs- Co-operative Bank of Kenya Limited & another* [2020] e KLR, 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 the 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. In the obtaining scenario, it is the finding of this court that a status quo order is merited to preserve the suit property.
35. Further, having reconsidered the position of the Interested Party in this matter, the court is of the view that, the Interested Party is a necessary party to the proceedings herein and should- therefore be joined into the suit as a Principal party. Consequently, the Court on its own motion sets aside the orders of 12th October, 2023 where Nairobi North Healthcare Limited was joined as an Interested Party and directs that it be joined as a 2nd Defendant/ Respondent in the suit.
36. In conclusion, I make the following orders:
- a. Nairobi North Healthcare Limited is hereby joined a 2nd Defendant/Respondent in this suit.
 - b. Parties shall maintain the prevailing status quo in respect of the suit property at the time of this ruling. In particular, the Plaintiff shall retain possession and occupation of Land Reference Number 209/3530/8 (I.R. No. 7702/8) commonly known as Park Road Nursing Home pending the hearing and determination of this suit.
 - c. The 2nd Defendant/ Respondent is hereby granted 15 days (excluding the Christmas vacation) to file its response to the amended Originating Summons.
 - d. The Plaintiff is granted corresponding leave to file a response to the 2nd Defendant's reply in 15 days upon service, if need be.
 - e. Costs of the application be in the cause.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY
DECEMBER, 2023.**

M. D. MWANGI

JUDGE.

In the virtual presence of:

Mr. Maina Chege, a director of the Interested Party

N/A for the Plaintiff/Applicant

N/A for the Defendant

Yvette: Court Assistant.

M. D. MWANGI

JUDGE.

