Omosa & 10 others v County Government of Nairobi & 7 others (Environment & Land Case E003 of 2024) [2025] KEELC 3472 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3472 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE E003 OF 2024

CG MBOGO, J

APRIL 30, 2025

BETWEEN

YUVINALIS NYABUTO OMOSA ..... 1ST PLAINTIFF

JOSEPH KIARIE KUNGU ..... 2ND PLAINTIFF

SOLOMON MWANGI GICHU ..... 3RD PLAINTIFF

PATRICIA MUTHONI MAINA ..... 4TH PLAINTIFF

PAULINE WAMBUI NJUGUNA ..... 5TH PLAINTIFF

JOSPHAT IRUNGU GACHEGI ..... 6TH PLAINTIFF

DAVID GACHUNGU MAARA ..... 7TH PLAINTIFF

TIMOTHY WAIRI GATHUKU ..... 8TH PLAINTIFF

MAGARET WANGUI GATHUNGU ..... 9TH PLAINTIFF

CHARLES KINYWA MAINA ..... 10TH PLAINTIFF

LIVINGSTONE KIPNGETICH SIGEI ..... 11TH PLAINTIFF

AND

THE COUNTY GOVERNMENT OF NAIROBI ..... 1ST DEFENDANT

THE ATTORNEY GENERAL ..... 2ND DEFENDANT

INSPECTOR GENERAL OF POLICE ..... 3RD DEFENDANT

WATER RESOURCES MANAGEMENT AUTHORITY ..... 4TH DEFENDANT

DCC KAMUKUNJI ..... 5TH DEFENDANT

OCPD BURUBURU ..... 6TH DEFENDANT

OOCS CALIFORNIA ..... 7TH DEFENDANT

CHIEF CALIFORNIA WARD ..... 8TH DEFENDANT

RULING

1. Before me is the notice of motion dated 10th October, 2024, filed by the plaintiffs/applicants, and it is expressed to be brought under Order 40 Rules 1(a)(b) & 4(1), (2) and Order 51 Rule (1) of the *Civil Procedure Rules* and Section 3A of the *Civil Procedure Act* seeking the following orders:-

    1. Spent.

    2. That the honourable court do grant an injunction to restrain the defendants/respondents jointly and severally by themselves, their agents, servants and howsoever otherwise from trespassing, alienating, entering or in any other way interfering with the plaintiffs' property known as plots number 211,301,302,363,254,334,214,299 all situated in Kiambu settlement scheme pending the hearing and determination of this suit.

    3. That this honourable court do give further orders that it may deem necessary.

    4. That the costs of this application be in the cause.

2. The application is premised on the grounds on its face. The application is further supported by the affidavit of the 1st plaintiff/applicant sworn on even date. On behalf of the plaintiffs/applicants, it was deposed that they own separate plots within Kiambu settlement scheme, and that they have paid all the rent, rates, survey fees and allocation fees. The 1st plaintiff/applicant deposed that he was allocated plot number 254, and notified of the same in a letter dated 21st September, 2001. Further, that he took possession and he is waiting for the issuance of the certificate of lease.

3. The 1st plaintiff/applicant deposed that on 11th June 2024, he was informed that persons from the 1st defendant/respondent's office visited the suit properties, and that they are carrying out illegal demolitions in the areas. He deposed that he did not receive any notice from the allocating authority notifying him of the cancellation of the letters of allotment issued to him.

4. The 1st defendant/respondent filed its response to the application vide the replying affidavit of Erick Okuku sworn on 28th October, 2024. The 1st defendant/applicant deposed that in line with its mandate to supervise, it has never received any application for approval or change of user for the construction of the properties erected on the suit properties. Further, that if there are any developments, the same are without the express approval of the 1st defendant/respondent which is an illegality.

5. The 1st defendant/respondent deposed that the lack of records showing any approval goes to show that there is no evidence of development permission including the occupation certificate. Further, that the plaintiffs/applicants have not demonstrated that the suit properties fall under the category of establishments that can be undertaken without an outright development permission as prescribed under regulation 23 of the *Physical and Land Use Planning (General Development Permission and Control) Regulations*. Further, it was deposed that prior to any occupation there must be inspection to certify the property is fit for habitation. It was further deposed that the plaintiffs/applicants have not demonstrated that they have met the said requirements to enable the issuance of the certificate of occupation. It was also deposed that the structures pose a risk and they further interfere with the structural plans of the 1st defendant/respondent.

6. The 4th defendant/respondent filed grounds of opposition challenging the application on the following grounds:-

1. That no reasonable cause of action has been disclosed as against the 4th respondent and as such, the 4th respondent is not a necessary party to the proceedings.

2. That the application makes no allegation of any breach of duty and/or infringement and/or violation of the applicants' rights by the 4th respondent.

3. That the 4th respondent has not undertaken any action in respect to the issue in question and therefore, it ought not to be a party in these proceedings.

4. That the application fails to plead any particulars of any breach of duty and/or infringement and/or violation of the applicants' rights by the 4th respondent.

5. That the application dated 10th October, 2024 is therefore bad in law, an abuse of the court process and ought to be dismissed with costs to the 4th respondent.

7. This court directed that the application be canvassed through written submissions. None of the parties filed their written submissions. Be that as it may, I have carefully analysed and considered the application, the replying affidavit filed by the 1st defendant/respondent as well as the grounds of opposition filed by the 4th defendant/respondent. The issue for determination is whether the plaintiffs/applicants have met the threshold for grant of injunction orders.

8. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the case of *Giella versus Cassman Brown* (1973) EA 358. This position has largely been pronounced in numerous decisions and more particularly in the case of N*guruman Limited versus Jan Bonde Nielsen & 2 others* CA No.77 of 2012 [2014] eKLRwhere 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".

9. As a result, the plaintiffs/applicants ought to first establish a prima facie case. In *Mrao Limited versus First American Bank of Kenya Limited* [2003] eKLR, the court stated 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."

10. Also, in the case of *Dr. Simon Waiharo Chege vs. Paramount Bank of Kenya Ltd*. Nairobi (Milimani) HCCC No. 360 of 2001: it was held:-

> "The remedy of injunction is one of the greatest equitable relief. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the

> applicant is normally required to show that damages would not be an adequate remedy for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as appertains to the subject matter of the suit does not meet the approval of the eye of equity."

11. On whether a prima facie case has been established, the plaintiffs/applicants contended that they own separate properties within Kiambu Settlement Scheme. In support thereof, they supplied copies of allotment letters, a copy of a certificate of lease as well as copies of receipts evidencing payments and images of developments. I have carefully perused through the annexures, and the certificate of lease with regard to property known as LR. No. 209/11955 appears to be registered in the names of the 11th plaintiff/ applicant. The letters of allotment for plots nos. 301, 302, 214 and 254 appear to be in the names of the 7th, 9th, 10th, 3rd, and 1st plaintiffs/applicants respectively. There is no record showing proof of ownership of the rest of the plots said to be owned by the 2nd, 4th, 5th, 6th, and 8th plaintiffs/ applicants. Secondly, the images supplied through photographs have little value at this stage because, it is not shown where, when and who took these pictures.

12. The plaintiffs/applicants needed to demonstrate irreparable harm that cannot be compensated by damages. In the case of *Pius Kipchirchir Kogo versus Frank Kimeli Tenai* [2018] eKLR, irreparable injury was described 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."

13. On this limb, the plaintiffs/applicants merely stated that certain persons visited the suit properties and informed them that they would carry out demolitions. On the other hand, the 1st defendant/ respondent in its response challenged the legal use of the land pursuant to the approvals and certificates of occupations required before any occupation thereof. The 1st defendant/respondent did not deny or confirm the visit on the suit properties. There is no evidence of any actual threat set to take place. In other words, the plaintiffs/applicants have not demonstrated loss that cannot be compensated by damages.

14. In my view, and upon careful consideration of the documents annexed, the plaintiffs/applicants have not persuaded this court to warrant the orders sought. While some of them may be owners of the plots listed, there is no evidence of actual threat, harm or danger on the suit properties that has been shown.

15. Arising from the above, it is my finding that the notice of motion dated 10th October 2024, lacks merit and it is hereby dismissed. Costs in the cause.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL, 2025.

HON. MBOGO C.G.

JUDGE

30/04/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Mativo for the 1st Respondent – present

No appearance for the Plaintiff/Applicant