



**Osoro v Nyachio & 2 others (Environment & Land Case E003 of 2023)
[2023] KEELC 22200 (KLR) (6 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22200 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE E003 OF 2023**

**M SILA, J
DECEMBER 6, 2023**

BETWEEN

PATRICK NYAKERARIO OSORO PLAINTIFF

AND

GEOFRFREY NYACHIEO 1ST DEFENDANT

LAND REGISTRAR, KISII 2ND DEFENDANT

HON. ATTORNEY GENERAL 3RD DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff asserting ownership of the suit land and availing documents of title to the same; plaintiff complaining of interference from the 1st defendant; 1st defendant not filing anything to oppose the application; court persuaded that the plaintiff has demonstrated a prima facie case and may suffer irreparable loss unless the 1st defendant is restrained; application for injunction allowed)

1. This suit was commenced through a plaint filed on 28 August 2023. The plaintiff avers to be the registered proprietor of the land parcel Kisii Municipality/Block I/781. In the plaint, she has pleaded that she was allocated this land by the Government on behalf of the Gusii County Council on 15 July 1993. Subsequently she obtained a lease which was issued to her on 19 April 1994. She states that she took possession of the land though she has been unable to develop it. She claims that the defendants have without any lawful justification entered her land and illegally built a temporary structure. In this suit, she wants the 1st defendant evicted from the suit land and permanently restrained from it.
2. Together with the plaint, the plaintiff filed an application for injunction seeking to restrain the 1st defendant from the suit land, and/or entering into any dealings with it, pending hearing and determination of the case. It is that application which is the subject of this ruling.



3. Despite being served, the 1st defendant has not entered appearance and has filed nothing towards the application. The State Law Office, on behalf of the 2nd and 3rd defendants, did not oppose the motion.
4. I have gone through the application and the material in support thereof. The plaintiff has displayed the Certificate of Lease to the suit land. She has demonstrated that she got the land after being issued with an allotment letter dated 15 July 1993 and a lease subsequently registered in her favour on 19 April 1996. I have no reason to doubt the documents presented by the plaintiff. As far as I can see, the plaintiff appears to be the registered proprietor of the suit land. The 1st defendant has not come to court to explain why he is interfering with the suit land or demonstrate that he has any interest in it.
5. In light of the foregoing, I am persuaded that the plaintiff has established a *prima facie* case with a probability of success. Unless stopped, the 1st defendant may waste the suit land to the detriment of the plaintiff which may lead the plaintiff to suffer irreparable loss.
6. I thus allow the plaintiff's application for injunction. I issue an order stopping the 1st defendant from entering, keeping possession of, or in any way interfering with the suit land pending hearing and determination of this case. In other words, pending hearing and determination of this case, possession of the suit property be with the plaintiff. I also issue an order of injunction stopping the defendant from leasing, charging, selling, or entering into any disposition in respect of the suit land. To fortify this order, I issue an order restricting the registration of any disposition in the register of the suit land pending hearing and disposal of this suit.
7. The plaintiff shall have the costs of this application as against the 1st defendant.
8. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 6 DAY OF DECEMBER 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

In the presence of: -

Mr. Migiro for applicant

N/A for 1st respondent

Mr. Ndiritu for 2nd and 3rd respondents

