



REPUBLIC OF KENYA



KENYA LAW
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**Ethics and Anti-Corruption Commission v Shamala & another; Jibril
(Being the Legal Administrator of the Estate of Esmael Mohamed Jibril
- Deceased) & another (Interested Parties) (Environment & Land Case
E002 of 2023) [2023] KEELC 21987 (KLR) (5 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 21987 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E002 OF 2023**

**DO OHUNGO, J
DECEMBER 5, 2023**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

LUCAS NANDIH SHAMALA 1ST DEFENDANT

WILSON GACANJA 2ND DEFENDANT

AND

**AHMED RASHID JIBRIL (BEING THE LEGAL ADMINISTRATOR OF THE
ESTATE OF ESMAEL MOHAMED JIBRIL - DECEASED) . INTERESTED PARTY**

IBADO ESTATES LIMITED INTERESTED PARTY

RULING

1. By Notice of Motion dated 30th January 2023, the plaintiff seeks the following orders:
 1. [Spent]
 2. [Spent]
 3. That this Honourable Court be pleased to issue an order of inhibition and preservation restraining the 1st Respondent whether by themselves, their agents, servants or assigns from alienating, transferring, charging, leasing, sub-dividing, consolidating, disposing of, wasting, or undertaking and construction or development of any nature thereon or part thereof on that parcel of land known as Kakamega Municipality Block 3/241 pending the hearing and determination of the suit herein.



4. That the costs of this application be provided for.
2. The application is supported by an affidavit sworn by William Kimutai, an investigator working with the Plaintiff (EACC). He deposed that pursuant to its statutory mandate, EACC undertook investigations on the liability for loss of various parcels of land belong to the government and that he was a member of the investigations team. That among the parcels subject to investigation was Kakamega Municipality Block 3/241 (the suit property) situated within Kakamega Municipality and having on it a government house known as Kak/Hou/Hg 22 which was reserved by the Government of Kenya for accommodating its workforce. That the investigations established that on 28th July 1999, the Second Defendant commissioned the alienation of the suit property to the First Defendant with full knowledge and in disregard that the suit property was already committed and in actual possession of the State Department of Housing.
3. Mr Kimutai further deposed that thereafter, a lease was registered at the District Land registry in Kakamega on 17th August 1999 and a Certificate of Lease issued on the same date to the First Defendant. He added that a search conducted at the Kakamega Land Registry revealed that the First Defendant remained the registered proprietor of the suit property. That the issuance and registration of the lease in favour of the First Defendant over the suit property was fraudulent and illegal in since the suit property was not available for allocation considering that it was already alienated for Government housing. He further deposed that there was real apprehension that the First Defendant may take steps to alienate, subdivide or deal with the suit property with a view to defeating the recovery process.
4. The First Defendant filed a replying affidavit in which he deposed that he purchased the suit property from Peter Raburu who was the original allottee and that a title was later issued in his name 17th August 1999. That he sold the suit property to Esmael Mohamed Jibril on 7th August 2019 and that Esmael Mohamed Jibril later passed away. That he stayed on the suit property until he handed vacant possession to Esmael Mohamed Jibril on 17th August 1999 and that Esmael Mohamed Jibril immediately started construction of a house on the suit property. He denied that the State Department of Housing was ever in possession of the suit property.
5. The Second Defendant did not respond to or participate in the hearing of the application.
6. The Interested Parties filed Notice of Motion dated 14th March 2023, through which they sought to join the suit. Since EACC and the First Defendant did not oppose the application, it was allowed on 26th April 2023 and the Interested Parties were therefore admitted into the proceedings.
7. Notice of Motion dated 14th March 2023 was supported by an affidavit sworn by Ahmed Rashid Jibril, the First Interested Party. He deposed that he is the administrator of the estate of Esmael Mohamed Jibril (Deceased) and a Director of the Second Interested Party. That the deceased who was his brother purchased the suit property from the First Defendant at a consideration of Kshs 15,000,000 upon payment of which the deceased took possession of the suit property. That his family constructed a six bedroom house on the suit property at a cost of over Kshs 30,000,000. That upon the deceased's demise, the suit property was transferred to the Second Interested Party.
8. The application was canvassed through written submissions which both EACC and the First Defendant filed.
9. I have considered the application, the affidavits, and the submissions. EACC is essentially seeking an interlocutory injunction. The principles applicable while considering 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 -vs- Cassman Brown & Co Ltd* [1973] EA 358 and [Nguruman Limited v Jan Bonde Nielsen & 2 Others](#) [2014] eKLR.

10. In the context of applications for interlocutory injunctions before this court, one should also bear in mind Paragraph 32 of Practice Directions on Proceedings in [The Environment and Land Court, and on Proceedings Relating to The Environment and The Use and Occupation of, and Title to Land and Proceedings in Other Courts](#) (Gazette Notice No. 5178 of 2014) which provides:

During the inter-partes hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order for status quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.

11. EACC contends that the suit property is public land and that the First Defendant obtained title in respect thereof irregularly and fraudulently. The First Defendant on the other hand maintains that its title was valid and that he later transferred the suit property to Esmael Mohamed Jibril. It is also maintained by the Interested Parties that the current registered proprietor of the suit property is the Second Interested Party. Whichever way one looks at it, the Government of the Republic of Kenya is not the current registered proprietor of the suit property. Determination of validity of the proprietorship must await determination of the suit.
12. There is no dispute that the suit property was initially public land and that an allotment letter was issued which led to the present title. Resolution of the dispute will depend to a large extent on propriety of the process that yielded the titles. I am persuaded that EACC has established a *prima facie case* and that damages will not be an adequate remedy. There is need to preserve the suit property. In doing so however, care must be taken to avoid excessively stifling the rights of the current registered proprietor beyond what is necessary to attain preservation. The current registered proprietor should be free to retain occupation and day to day use of the suit property but without alienating, transferring, charging, leasing, sub-dividing it or disposing of it, pending determination of the case.
13. I find merit in Notice of Motion dated 30th January 2023 and I will allow it in a modified form. Consequently, I make the following orders:
- a. An order of inhibition and preservation is hereby issued restraining the First Defendant and the Interested Parties whether by themselves, their agents, servants or assigns from alienating, transferring, charging, leasing, sub-dividing, consolidating, disposing of, or wasting the parcel of land known as Kakamega Municipality Block 3/241 pending the hearing and determination of this suit.
 - b. Costs shall be in the cause.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 5TH DAY OF DECEMBER 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:



No appearance for the Plaintiff

Ms Mumbi for the First Defendant and the Interested Parties

No appearance for the Second Defendant

