



REPUBLIC OF KENYA



**Kiroiro na Enye Community Based Organisation v Khosla & 3 others (Environment & Land Case 4 of 2023) [2023] KEELC 22109 (KLR) (5 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22109 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 4 OF 2023**

**FM NJOROGE, J  
DECEMBER 5, 2023**

**IN THE MATTER OF AN APPLICATION FOR DECLARATION THAT  
THE PLAINTIFFS HAVE OBTAINED OWNERSHIP OF THE ABOVE SAID  
PARCEL OF LAND BY WAY OF ADVERSE POSSESSION AND IN THE  
MATTER OF THE LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA**

**BETWEEN**

**KIRIRO NA ENYE COMMUNITY BASED ORGANISATION ..... APPLICANT**

**AND**

**SHAMSHUDIN KHOSLA ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF SURVEY MOMBASA COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE OCS MTWAPA POLICE STATION ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. For determination is the Applicant's amended notice of motion dated 23rd October 2023 brought under Section 3A & 63 (e) of the [Civil Procedure Act](#) and Order 40 rules 1 & 4, Order 51 of the [Civil Procedure Rules](#). The Applicant seeks the following orders: -
  1. Spent.
  2. Spent.
  3. That this honourable court be pleased issue temporary injunction restraining the 1<sup>st</sup> Defendant/respondent by themselves himself (*sic*), their his (*sic*) agents, employees, representatives and assisgnees(*sic*) or any other person from trespassing, encroaching, damaging, demolishing, selling, alienating, transferring or in any way whatsoever interfering



with the Plaintiff/applicant's quiet possession of the suit property Land Parcel No MN/IV/86 measuring approximately 100 acres pending the hearing and determination of the originating summons and the 4<sup>th</sup> Defendant/respondent assist in compliance of the court order.

4. That this honourable court be pleased to invoke its inherent powers and issue any further orders that will be just and fair to safeguard the interest of the plaintiff/applicant herein.
5. That the costs of this application be in cause.
2. The application is based on the grounds outlined on the face of it and the supporting affidavit sworn by Gibson Chome Kambi, the Applicant's chairman, on 23rd October 2023, wherein he deposed that members of the Applicant organization have peacefully resided on the Plot No MN/IV/86 (the suit property) for over 50 years until sometime in April 2023 when some individuals said to be the 1<sup>st</sup> Respondent's associates invaded the suit property. Mr. Chome contended that the suit property is registered in the name of the 1<sup>st</sup> Respondent but the plaintiffs have acquired in interest by way of adverse possession.
3. The application is not opposed. However, it is not automatic that an unopposed application succeeds. The Applicant has a duty to plead and prove its case. The Supreme Court in *Gideon Sitele Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR stated as follows on unopposed applications: -

"[10] Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that *prima facie*, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter. We see no such jurisdictional issue in the application before us. Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court."
4. The case of *Giella v Cassman Brown* [1973] E.A 358, lays down the principles for granting an interlocutory injunction. The court will consider whether: -
  - (a) the applicant has established a *prima facie* case;
  - (b) the applicant has demonstrated probability of irreparable injury if a temporary injunction is not granted; and
  - (c) in case of any doubts the court will determine the matter on a balance of convenience.
5. The purpose of an interlocutory prohibitory injunction ordinarily is to ensure that the subject matter of the suit is preserved and that the course of justice is not subverted by the time the suit is up for trial. When ensuring such preservation, the court must also ensure that neither party is unduly prejudiced.
6. The Applicant exhibited a copy of certificate of postal search dated 25th July 2023 and a certificate of ownership, both showing that the 1<sup>st</sup> Respondent is the registered owner of the suit property. It is the Applicant's contention that the law entitles them to dispossess the 1<sup>st</sup> Respondent by virtue of being on the suit property for over 50 years.
7. On a *prima facie* basis, I find that the Applicant, though their application is unopposed, has not made a case which can warrant this court to grant the orders sought.



8. First, the caveats registered against the suit property imply numerous interests in the suit property on the part of third parties. Secondly, there are photographs of some destroyed structures but there is no evidence that they were actually destroyed by agents of the 1<sup>st</sup> Respondent or when the destruction occurred. Not even one structure has been left standing if the photographs are anything to go by. In this court's view, the demolition sought to be stopped has already occurred and the Applicant has indeed failed to show this court that its members are still in occupation of the suit property.
9. In the result, I find that the Applicant has not made out a case for an interlocutory injunction relief. The amended notice of motion dated 23rd October 2023 is hereby dismissed. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 5<sup>TH</sup> DAY OF DECEMBER 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC MALINDI**

