



**Kamukunji Riverside Tailors and Ironing Society Nairobi v Onyango & 4 others (Environment & Land Case E259 of 2021) [2022] KEELC 2850 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 2850 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E259 OF 2021  
LC KOMINGOI, J  
APRIL 28, 2022**

**BETWEEN**

**KAMUKUNJI RIVERSIDE TAILORS AND IRONING SOCIETY  
NAIROBI ..... PLAINTIFF**

**AND**

**GEORGE ONYANGO ..... 1<sup>ST</sup> DEFENDANT  
JUDITH ANYANGI ..... 2<sup>ND</sup> DEFENDANT  
VINCENT OMONDI ..... 3<sup>RD</sup> DEFENDANT  
FLAND CHEGE ..... 4<sup>TH</sup> DEFENDANT  
BONIFACE WAMBUA ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. This is the Notice of Motion dated 13<sup>th</sup> July 2021 brought under section 3A of the [Civil Procedure Act](#) and all enabling provisions of the law.
2. It seeks orders;
  - i. Spent.
  - ii. The honourable court issue restraining orders against the Defendants trespassing property Plot No. A Pumwani Gorofani Infill pending the hearing and determination of this suit.
  - iii. The honourable court issue an injunction stopping the Defendants from levying any charges and taking any income from property Plot No A Pumwani Gorofani Infill pending hearing and determination of this suit.



- iv. The Honourable Court do direct that any income accruing from use of property Plot No. A Pumwani Gorofani Infill be deposited to a/c No xxxx Co-operative Bank under account name Kamkunji Riverside Tailors and Ironing Society being the account of the society pending the hearing and determination of this suit.
  - v. The honourable court do herein issue an inter-parties hearing date on priority basis.
  - vi. The cost of the suit be provided for.
3. The grounds are on the face of the applicant and are set out in paragraphs (i) and (xiv).
  4. The application is supported by an affidavit sworn by Rogot Omondi Muganda, Chairman of the Plaintiff/Applicant on the 13<sup>th</sup> July 2021 and a supplementary affidavit sworn on the 26<sup>th</sup> November 2021.
  5. The application is opposed. There is a replying affidavit sworn by Fland Chege, Chairman of Mapasi Self Help Group on the 14<sup>th</sup> November 2021.
  6. On the 16<sup>th</sup> November 2021, the court with the consent of parties directed that the notice of motion be canvassed by way of written submissions.
  7. It is the Plaintiff's/Applicant's case that it is the registered owner of Plot A, Pumwani Gorofani Infill. That the Defendants invaded the suit premises and displaced the Plaintiff's members.
  8. The Defendants/Respondents on the other hand state that they have been conducting businesses on the suit property since the year 1990. That the Plaintiff's members and the Defendants/Respondents were all members of Mapasi Self help group and they co-existed peacefully.
  9. I have considered the notice of motion and the affidavit in support. I have also considered the affidavit in response, the rival submissions, and the authorities cited. The issues for determination are:-
    - i. Whether the Plaintiff's/Applicant's application meets the threshold for grant of temporary injunction.
    - ii. Who should bear costs of this application?
  10. In an application for injunction the onus is on the application to satisfy the court that it should grant an injunction. The principles were laid down on the precedent setting case of *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358. In the case of *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.
  11. In the case of *Kenleb Cons Ltd vs New Gatitu Services Station Ltd & Another* [1990] KLR 557 Bosire J (as he then was) held that:-
 

“To succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show he has a right legal or equitable, which requires protection by injunction”.
- I find that the Plaintiff has not demonstrated that it deserves this court's protection.



12. In paragraph 7 of the supplementary affidavit, Rogot Omondi Muganda depones:-

“That it was not until 2016 when a group of people (goons) from nowhere disrupted our business and occupied our space by force misplacing the Plaintiff and its members”.

It is not clear from the above averments whether the Defendants are the ones who invaded the space.

13. I have gone through the averments in the affidavit Fland Chege sworn on the 14<sup>th</sup> November 2021, it appears the Defendants and the Plaintiff's members have been undertaking business on the suit premises and have co-existed for many years. These averments were not controverted.

14. I find that the Plaintiff has failed to establish a prima facie case with a probability of success at the trial.

15. I find no merit in this application and the same is dismissed. The costs do abide the outcome of the main suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL 2022.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiff

Ms Mbembe for Mr. Otieno for the Defendants

Steve - Court Assistant

