



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E019 OF 2021 (OS)

STANLEY ANYAMBA AGEYO1ST APPLICANT

JAMES ZOLLO MOGAKA2ND APPLICANT

VERSUS

MUSA MATU RIUNGA ALIAS

MUSA MATU JOSHUA RIUNGA1ST RESPONDENT

RICHARD MAINA2ND RESPONDENT

DIRECTOR OF SURVEY3RD RESPONDENT

CITY COUNCIL OF NAIROBI4TH RESPONDENT

CHIEF LAND REGISTRAR5TH RESPONDENT

ATTORNEY GENERAL6TH RESPONDENT

RULING

1. The application before me is an application dated 30th April 2021 brought under the provisions of Order 40 Rules 1,2 and 3 of the Civil Procedure Rules. It is an application for an injunction to restrain the 3rd, 4th and 5th Respondents in one way or the other from interfering with the suit land registered as L.R No. 5842/15, pending the hearing and determination of this suit. The application is opposed by the 3rd, 4th, 5th and 6th Respondent.

2. The Application is supported by the grounds on its face and further the by the Affidavit sworn by the 1st Applicant. It was the Applicants case that the suit property L.R No. 5842/15 is registered in the name of the 1st Respondent and that they have been in the suit property from the year 1998 without any interruption and have been continuously tilling the land. The Applicant also averred that they had put up structures in the suit property.

3. It was also stated that the 1st and 2nd Respondents despite knowledge of the Applicants continuous occupation to the suit land had never laid a claim to the same hence their occupation had been continuous and uninterrupted.

4. It was further stated that the Applicants were apprehensive that the 3rd Respondent was bound to interfere with the deed plans of the suit property and the 4th Respondent too unless restrained would interfere with the rates file.

5. In opposition to the said application, counsel for the 3rd, 5th and 6th Respondent filed grounds of opposition dated 3rd December 2021. In a nutshell, it was averred that the Applicants had failed to satisfy the necessary ingredients for the application of adverse possession and the application is not supported by any probative evidence of value.

6. The 4th Respondent filed a replying affidavit sworn on 4th October 2021 by **Abwao Erick Odhiambo**, its acting County Solicitor. The gist of the affidavit was to the effect that the Applicants had not established any prima facie case since there was no outstanding rates in respect

to the suit property. A copy of the property rates payment request was also annexed as annexure “EA1” and it confirmed that the rates were being paid by the 1st Respondent.

7. Pursuant to the directions of the Court issued on 24th January 2022, the Court directed that the application be canvassed through written submissions. The Applicants filed their written submissions dated 14th February 2022 through **M/S Mogeni & Co. Advocates** while the 4th Respondent filed their submissions dated 28th February 2022 through **M/S Karanja & Partners**. There were no submissions on record for the 1st, 2nd, 3rd, 5th and 6th Respondents at the time of preparation of this ruling.

8. I have considered the Application, the responses filed thereto and submissions filed by the Applicants and the 4th Respondent. I have also considered the decisions that were relied on. The single issue which in my opinion arise for determination is whether the Applicants have met the threshold for the grant of temporary orders of injunction sought.

9. The conditions for consideration in granting an injunction were settled in the celebrated case of **Giella v Cassman Brown & Company Limited (1973) E A 358**, where the court expressed itself on the condition's that a party must satisfy for the court to grant an interlocutory injunction as follows: -

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

10. The test for granting of an interlocutory injunction was considered in the **American Cyanamid Co. v Ethicom Limited (1975) A AER 504** where three elements were noted to be of great importance namely:-

i) There must be a serious/fair issue to be tried,

ii) Damages are not an adequate remedy,

iii) The balance of convenience lies in favour of granting or refusing the application.

11. The important consideration before granting a temporary injunction under **order 40 Rule 1 of the Civil Procedure Rules** is the proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property, the court is in such a situation enjoined to grant a temporary injunction to restrain such acts. In the instant case, the major contention by the Applicants is that they have been in continuous and uninterrupted occupation of the suit property since 1998 and that they are apprehensive that the 3rd and 4th Respondents may interfere with the deed plans and rates file of the suit property respectively.

12. The question which therefore arises is whether the application meets the threshold set for the granting of orders of temporary injunction. In **Mrao Ltd v First American Bank of Kenya and 2 others. (2003) KLR 125** which was cited with approval in **Moses C. Muhia Njoroge & 2 others v Jane W Lesaloi and 5 others, (2014) eKLR**, the Court of Appeal defined a prima facie case as: -

“A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later”.

13. As I have already stated in this ruling, the applicants’ main contention is that they have been in the suit property since 1998 having been in continuous occupation without any interruption and have been continuously tiling the land and they are apprehensive that there is a danger of interference with the deed plan of L.R No. 5842/15 and also a danger of the 4th Respondent interfering with the rates file.

14. I have perused the entire affidavit and note that there is no evidence indicating any intended threat either by documentary or otherwise. The applicants did not also demonstrate any compelling reasons to warrant the need of the injunctive orders as was sought in the application. The Applicants averments remain as mere apprehensions.

15. I am therefore not satisfied that the applicant has established a prima facie case so as to warrant the granting of the orders of injunction. I am guided by the decision of **Ringera J. (as he was then was)** in the case of **Showind Industries v Guardian Bank Limited & Another (2002) 1 EA 284** where the Learned Judge stated as follows: -

“.....an injunction is granted very sparingly and only in exceptional circumstances such as where the Applicant’s case is very strong and straight forward. Moreover, as the remedy is an equitable one, it may be denied where the Applicant’s conduct does not meet the approval of Court of equity or his equity has been defeated by laches”

16. Having found that the applicant has not established a prima facie case, I find that it will not be necessary to consider if the two remaining conditions for the granting of orders of injunction have been met as it is a requirement that all the three conditions be fulfilled before an order of injunction is granted. I am guided by the decision in **Nguruman Limited V. Jan Bonde Nielsen & 2 Others, CA NO. 77 OF 2012**, where the Court expressed itself on the importance of satisfying all the three requirements for an order of injunction as follows: -

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

(a) establish his case only at a prima facie level,

(b) demonstrate irreparable injury if a temporary injunction is not granted, and

(c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between. (Emphasis added).

17. For the above reasons, I find that the application dated 30th April 2021 is not merited and I therefore dismiss it with no orders as to costs.

Dated, Signed and Delivered at Nairobi this 21st day of April 2022.

E. K. WABWOTO

JUDGE

In the virtual presence of:-

Mr. Omangi Gichana for the Applicant.

N/A for the 1st Respondent

N/A for the 2nd Respondent

N/A for the 3rd Respondent

Ms. Karanja for the 4th Respondent

N/A for the 5th Respondent

N/A for the 6th Respondent

Court Assistant: Caroline Nafuna.