



**Trustees v Salat & another (Environment & Land Case  
E046 of 2022) [2022] KEELC 132 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 132 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E046 OF 2022**

**LN MBUGUA, J  
MAY 26, 2022**

**BETWEEN**

**TELEPOSTA PENSION SCHEME TRUSTEES ..... PLAINTIFF**

**AND**

**JOSEPHINE CHESANG SALAT ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Coming up for determination is a Notice of Motion application dated 8<sup>th</sup> February 2022 by the Plaintiff seeking orders that pending the hearing of the application and the suit:
  - a). A temporary order of injunction be issued restraining the Defendants, either by themselves, their agents, administrators, servants, assignees and/or anybody acting on their instructions and/or their authority from howsoever dealing with alienating, selling, transferring, charging, leasing, disposing of and/or assigning or in any other manner whatsoever interfering with or altering the registered interest over the property known as Land Reference No. 209/3154 (I.R. No. 73509), Mwingi Road/Nyeri Road, Kileleshwa, Nairobi.
  - b). A temporary injunction be issued restraining the 1<sup>st</sup> Defendant either by itself, its contractors, agents, employees or any other person claiming through her from continuing with any construction works on the property known as Land Reference No. 209/3154 (I.R. No. 73509), Mwingi Road/Nyeri Road, Kileleshwa, Nairobi.
  - c). In the alternative to (a) above, an inhibition order do issue inhibiting the registration of any dealing whatsoever with the property known as Land Reference No. 209/3154 (I.R. No. 73509), Mwingi Road/Nyeri Road, Kileleshwa, Nairobi.
  - d). That the costs of this application be borne by the Defendants/ Respondents.



2. This application premised on the grounds elucidated on the body of the application and in the sworn affidavit dated 8<sup>th</sup> February 2022 by Peter K. Rotich the Administrator and Trust secretary of the Plaintiff outlines that the suit property previously belonged to Kenya Posts and Telecommunications Corporation (herein after referred to as KPTC) which under a Trust Deed, had an obligation to make pension payments to its Scheme members.
3. However, in place of the payments, KPTC vested and transferred some immovable properties to the scheme as part of the pension settlement. Among the transferred properties was the suit property. The property was designated for public use and was not available for private allocation. This notwithstanding, the applicant avers that the suit property is currently registered in the name of the 1<sup>st</sup> Defendant and it is unclear how this came to be because neither KPTC nor the scheme sold, leased nor transferred its interest over the said property to any third party.
4. The applicant states that they have taken several steps in a quest to protect the interests of the suit property unsuccessfully. These include lodging an application for review and revocation of the title to the suit property with the National Land commission; lodging a complaint with the Ethics and Anti-Corruption Commission on the issue of acquisition of the suit property by the 1<sup>st</sup> Defendant and filing a caution for registration under the [Land Registration Act](#) at the Ministry of Lands but the caution was yet to be registered.
5. The applicant further states that following publications of caveat emptor notices in local dailies, the 1<sup>st</sup> Defendant responded to one of the notices stating that she was allocated the suit property by her employer and obtained title to the land in May 1994 following an application for allotment to the Commissioner of Lands.
6. The applicant noted that the suit property which was used as staff quarters for KPTC employees is currently undergoing developments commissioned by the 1<sup>st</sup> Defendant. However, there is a notice on the perimeter wall of the premises that the construction works on the suit property have been halted by the National Construction Authority.
7. The applicant avers that they have done everything possible to protect the interests of the scheme members over the suit property and if the orders sought are not granted, the substratum of the suit might dissipate thus defeating their claim. They added that the application met the threshold set in *Giella vs. Cassman Brown* case noting that any loss occasioned could not be compensated by an award of damages.
8. The application was served but no response was filed. In that regard the court was urged to find that the application was unopposed. However, this court is still bound to delve in the merits of the application to determine if the same can be allowed - see the holding in Supreme Court of Kenya case of [Tullow Oil PLC & 3 others v PS. Ministry of Energy & 15 others](#) (2020) eKLR.
9. The gist of this application has been summarized hereinabove and the Court shall not rehash the same. From the grounds and annexures accompanying the application, this court notes that the title and ownership of the suit property is contested. The Applicant has annexed copies of title registered in the name of the 1<sup>st</sup> Defendant as well as correspondence between them and Advocates for the 1<sup>st</sup> Defendant (at the time) on the issue of ownership of the said property and complaints lodged with the Ethics and Anti-Corruption Commission and the National Land Commission on the same issue.
10. In paragraph 11 of the plaint, the applicant mentions year 2013 as the time when they learnt that the suit land was registered in the name of the 1<sup>st</sup> defendant who was in the process of erecting Multi-dwelling units on the said land. In paragraph 13 thereof, the applicant avers that the multi-dwelling



apartment units are under construction. And in the final prayer (e), the applicant is seeking “ an order directing the 1<sup>st</sup> defendant to issue vacant possession of the property...to the plaintiff”.

11. What resonates from the above facts is that the granting of injunctive orders at this stage would amount to issuance of a major relief at the interlocutory stage- See [\*Daniel Atibu Jasimba v Ainea Sandanyi Magana\*](#) [2013] eKLR,.
12. I find that the appropriate order to give is to confirm the order of inhibition which had been granted earlier on. In that regard, the application is allowed Only in terms of prayer No. 3 (c)(Inhibition) with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Nyaribo for the Plaintiff/Applicant

Court Assistant: Eddel

