



Stantech Motors Limited v Syokimau Farm Limited & 4 others (Environment & Land Case E005 of 2022) [2022] KEELC 3447 (KLR) (25 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3447 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E005 OF 2022**

**A NYUKURI, J
MAY 25, 2022**

BETWEEN

STANTECH MOTORS LIMITED APPLICANT

AND

SYOKIMAU FARM LIMITED 1ST RESPONDENT

PAUL MASILA KIMEU 2ND RESPONDENT

BENEDICT MACKENZIE MUTUKU 3RD RESPONDENT

SAMUEL NDERITU 4TH RESPONDENT

CHIEF LAND REGISTRAR 5TH RESPONDENT

RULING

1. Vide a notice of motion application dated January 26, 2022, the plaintiff/applicant sought the following orders;
 - a) Spent.
 - b) Spent.
 - c) That the OCPD Athi River do ensure compliance of the orders herein by the Respondents together with their agents and servants.
 - d) That the Honourable court be pleased to grant a permanent injunction restraining the 1st, 2nd, 3rd and 4th respondents either by themselves, their agents and or servants from trespassing, entering, constructing and or developing the suit property Grant No. IR 46936 Land Reference No. 12715/616 Syokimau Athi River and or whatsoever manner interfering with the Applicants peaceful possession of the suit property until the interpartes hearing of this suit.



- e) That costs of this application be provided for.
2. The application is supported by the applicant's affidavit sworn on January 26, 2022 together with a supplementary affidavit sworn on March 2, 2022
 3. The application was opposed. The 3rd respondent filed a replying affidavit on February 15, 2022 in opposition to the application. He stated that he was the registered proprietor of the suit property having purchased it from one Peter Ndeti who had been a member and shareholder of the 1st respondent. That Peter Nzuki Ndeti and Peter Ndeti are two different people. He further averred that the plaintiff obtained registration of the suit property by unlawful means and that it is him who is in occupation having fenced the same.
 4. The second respondent also filed an affidavit sworn on February 10, 2022 where he stated that the 1st respondent was wound up in 2013 and that he was the administrator thereof. He further averred that Peter Ndeti was their member and shareholder having been issued with a share certificate No. 109 and was allocated the suit property. That Peter Ndeti sold the suit property to the 3rd defendant in 1982.
 5. The application was canvassed by written submissions. On record are the applicant's submissions filed on March 3, 2022 and the Respondent's submissions filed on March 1, 2022, both of which I have duly considered.

Analysis and determination

6. I have considered the application, supporting and supplementary affidavits, the replying affidavit as well as parties' submissions. The issue that arise for determination is whether the applicant is entitled to the orders sought. In the instant application, the applicant has sought for a permanent injunction pending hearing and determination of the suit herein. It is trite law that parties are bound by their pleadings. The Black's Law Dictionary defines a permanent injunction as an injunction granted after a final hearing on the merits. At the interlocutory stage, the court can only issue an interlocutory injunction also known as a temporary injunction or preliminary injunction or injunction pendent lite. As this suit is yet to be heard on its merit, this court has no jurisdiction to issue a permanent injunction at this stage.
7. Having noted that both the applicant and the respondents claim ownership of the suit property and indeed possess title documents to the suit property, it will not be proper at this preliminary stage to make conclusive findings on which title is genuine as that may embarrass the fair trial of this matter. In my considered view, at this stage, it is only reasonable and in the interests of justice that the subject matter of this suit is preserved pending the hearing and determination of the suit. This will also facilitate an expeditious hearing of this dispute.
8. In the premises, I make the following orders;
 - a. The application dated January 26, 2022 be and is hereby struck out.
 - b. Status quo obtaining on the suit property being Grant No. IR 46936 Land Reference No. 12715/616 Syokimau Athi River, be maintained so that there is no further construction on, or sale, lease, charge, transfer or registration of any dealings whatsoever, thereon, pending hearing and determination of this suit.
 - c. All the parties in this suit and or their agents are ordered to keep off the suit property, being Grant No. IR 46936 Land Reference No. 12715/616 Syokimau Athi River pending hearing and determination of this suit.



- d. The OCPD Athi River do ensure compliance of the orders herein.
 - e. Costs shall abide the outcome of the suit.
9. Orders accordingly

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 25TH DAY OF MAY 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of:

Mr. Mutinda for the Plaintiff/Applicant

Mr. Malelu for the 1st, 2nd, 3rd and 4th Defendants

No appearance for the 5th Defendant

Ms Josephine Misigo – Court Assistant

