



Leatoro (Suing as legal representative of the Estate of Tialalo Leatoro (Deceased) & another v Lesepe & 4 others (Environment & Land Petition E004 of 2021) [2022] KEELC 3811 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3811 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND PETITION E004 OF 2021**

**YM ANGIMA, J
JUNE 23, 2022**

BETWEEN

**SAMUEL LTAFENI LEATORO (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF TIALALO LEATORO (DECEASED)) 1ST PETITIONER
SADIKI LEATORO 2ND PETITIONER**

AND

**JOHN LESEPE 1ST RESPONDENT
BENARD ERNEST LESEPE 2ND RESPONDENT
DISTRICT LAND ADJUDICATION OFFICER SAMBURU COUNTY 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT
CHIEF LAND REGISTRAR, NYAHURURU LAND REGISTRY 5TH RESPONDENT**

RULING

A. The Petitioners' Application

1. By a notice of motion dated June 29, 2021 grounded upon Articles 22 and 23 (3) of the *Constitution* of Kenya, Rule 21 of the *Constitution (Protection of Rights and Fundamental Freedoms and Enforcement of the Constitution) Rules 2012*, Article 20, 21, 24, 27, 40, 60, 64, 73 & 232 of the *Constitution* of Kenya, 2010, Sections 68 and 80 of *Land Registration Act* 2012, Order 40, 51 Rule 1 of Civil Procedure Rules, Section 1A, 1B & 3A of the *Civil Procedure Act* and all other enabling provisions of Law) the Petitioners sought the following orders:



- a. Spent
 - b. Spent
 - c. Spent
 - d. That pending hearing and determination of the petition herein, the 1st and 2nd Respondents, their agents/servants/employees/representatives or any persons claiming any right or interest through 1st and 2nd Respondents be restrained from transferring, trespassing, entering into, evicting, alienating, fencing or in way interfering with the Petitioners' Possession, enjoyment of the land parcel no Samburu/Suguta Mar Mar 'A'/1261.
 - e. Spent
 - f. That pending hearing and determination of the petition herein this Honourable court be pleased to issue an order of restriction on land parcel number Samburu/Suguta Mar Mar 'A'/1261.
 - g. Spent
 - h. That pending hearing and determination of the petition herein, the criminal proceedings in Criminal Case No E275 of 2021 Republic vs Sadiki Leatoro (the 2nd Petitioner herein) at Maralal Magistrates court on charges of forcible detainer pertaining to the suit property herein be stayed.
 - i. Spent
 - j. That pending hearing of the petition herein, conservatory orders be and are hereby issued restraining the 6th and 7th Respondents herein, their agents, servants, employees and/or representatives from harassing, intimidating, prosecuting, arbitrarily arresting, detaining, commencing any impending criminal prosecution and/or further prosecuting of the 1st Petitioner/Applicant herein.
 - k. That the OCS Maralal Police Station to ensure compliance with court orders.
 - l. That the costs of this application be provided for.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 1st Petitioner on June 29 2021 and the exhibits thereto. The Petitioners contended that the suit property was ancestral land which belonged to their late father and that the land adjudication process was undertaken by the 2nd Respondents secretly, irregularly and fraudulently with the consequence that they were not allocated any land despite being eligible for allocation. It was contended that the Petitioners' deceased father and their forefathers had resided on the suit property for centuries and that upon their demise they were buried on the suit property.
 3. The Petitioners further contended that the suit property had been irregularly allocated to the 1st and 2nd Respondents who were strangers and not residents of the area. It was further contended that the 1st, 2nd, 6th and 7th Respondents were misusing the criminal justice system to have them evicted from the suit property hence the petition and application for interim orders. It was contended that the 2nd Petitioner had already been arrested and charged with forcible detainer whereas the 1st Petitioner faced imminent arrest and prosecution for alleged forcible detainer over their occupation of the suit property.



B. The 1st And 2nd Respondents' Response

4. The 1st and 2nd Respondents filed a replying affidavit sworn by the 2nd Respondent on September 20, 2021 in opposition to the application. They contended that they were lawfully allocated the suit property as members of Loosuk Group Ranch (the Ranch). They further contended that neither the Petitioners nor their late father was a member of the Ranch hence he was not entitled to be allocated any land in the area. They further contended that the Petitioners were merely trespassers on the suit property and that they had purchased their own land elsewhere being Title No. Samburu/Guguta Mar Mar 'A'/1272. The court was consequently urged to dismiss the application.

C. The Petitioners' Rejoinder

5. The Petitioners filed a supplementary affidavit sworn on 31.12.2021 in response to the replying affidavit. They reiterated that the 1st and 2nd Respondents were allocated the suit property in a flawed process which was not conducted in accordance with the *Land Adjudication Act* without public participation and without publication of the adjudication register. It was contended that one of the officials of the Ranch was Muliro Lesepe who was a relative of the 1st and 2nd Respondents and must have influenced the adjudication process.
6. The 1st Petitioner further stated that although he had bought 3 acres of his own land for valuable consideration, the said land had no bearing on the ancestral land to which his late father was entitled in the land adjudication process. The Petitioners objected to any eviction from the suit property which they contended they had occupied as a family since 1970.

D. The 3 – 7 Respondents' Response

7. The Attorney General filed a replying affidavit in answer to the petition on behalf of the 3 – 7 Respondents. However, the state counsel appearing for the Attorney General informed the court that he did not wish to participate in the application for interim orders. The Attorney General did not file any response on the allegations of the 6th and 7th Respondents misusing the criminal justice system with a view to evicting the Petitioners from the suit property.

E. Directions On Submissions

8. When the application was listed for inter partes hearing, it was directed that the same shall be canvassed through written submissions. The parties were granted timelines within which to file and exchange their written submissions. The record shows that the Petitioners filed their submissions on March 10, 2022 but none of the Respondents appear to have filed submissions.

F. The Issues For Determination

9. The court has considered the Petitioners' application for interim orders, the replying affidavit in opposition thereto as well as the Petitioners' supplementary affidavit. The court is of the opinion that the following issues arise for determination herein:
 - a. Whether the Petitioners have made out a case for the grant of an interim injunction.
 - b. Whether the Petitioners have made out a case for the grant of a restriction to prevent any further dealings with the suit property.
 - c. Whether a conservatory order should be granted to restrain the 6th and 7th Respondents from harassing, arresting, detaining or prosecuting the 1st Petitioner.



- d. Whether the criminal proceedings against the 2nd Petitioner in Criminal Case No E275 of 2021 – Republic – Sadiki Leatoro should be stayed pending the hearing and determination of the petition.

G. Analysis And Determination

a. Whether the Petitioners have made out a case for the grant of an interim injunction.

10. The court has considered the material and submissions on record on this issue. There is no doubt from the material on record that the Petitioners have been residing on the suit property for a considerable period of time. It would appear that even their late father was resident on the suit property and that upon his demise he was buried there. The question of whether or not the suit property was their late father's ancestral land and whether he was entitled to be allocated land during the land adjudication process shall be conclusively determined during the trial. The court is, therefore, satisfied that the Petitioners have demonstrated a prima facie case with a probability of success at the trial.
11. The court has considered the material on record on whether or not the Petitioners stand the risk of suffering irreparable loss or injury unless the injunction sought is granted. The Petitioners have exhibited photographic evidence to demonstrate the developments they have undertaken on the suit property. The photographs depict some dwelling houses and livestock on the suit property. The Petitioners' contended that the suit property was their ancestral land hence its loss cannot be easily compensated by an award of damages. The court is satisfied that the Petitioners have satisfied the second principle for the grant of an injunction as required by law.
12. Even if the court were to consider the balance of convenience the court is of the opinion that the same would tilt in favour of the Petitioners. There is unchallenged evidence on record to the effect that the Petitioners and their family members are in occupation of the suit property and that they have undertaken some developments thereon. It is thus evident that the Petitioners shall suffer greater hardship by denying them an injunction than the Respondents would suffer by granting the injunction. Consequently, the court is of the opinion that the Petitioners have satisfied all the requirements for the grant of an injunction as set out in the case of *Giella vs Cassman Brown & Co Ltd*[1973] EA 358.

b. Whether the Petitioners have made out a case for the grant of a restriction to prevent any further dealings with the suit property.

13. Although the Petitioners prayed for a 'restriction' to prevent any dealings with the suit property, what the Petitioners must have intended to seek was an order of inhibition to prevent any dealings with the suit property. Indeed, they cited the provisions of Section 68 of the *Land Registration Act* 2012 in the heading of their application. The court is of the opinion that there is a legitimate reason to preserve the suit property which is in dispute pending the hearing and determination of the petition. There is a real danger of the petition being rendered nugatory if the suit property were to be alienated or disposed of during the pendency of the petition. Accordingly, the court is inclined to grant the order sought in order to preserve the subject matter of the petition until resolution of the dispute.

c. Whether a conservatory order should be granted to restrain the 6th and 7th Respondents from harassing, arresting, detaining or prosecuting the 1st Petitioner.

14. The court has considered the material and submissions on record on this issue. It is apparent from the material on record that the underlying dispute in this petition arose from the impugned land adjudication process with respect to land belonging to the Ranch. The Petitioners laid a claim on



the suit property contending that it was their ancestral land and that their father was entitled to be allocated the same. On the other hand, the 1st and 2nd Respondents claimed the suit property by virtue of allocation by the Group Ranch during the land adjudication process. The court is of the opinion that the nature of the land dispute is of a civil nature and the Respondents were not justified in employing the criminal justice system either to have the Petitioners evicted or to facilitate the 1st and 2nd Respondents' occupation thereof.

Consequently, the court is inclined to grant the conservatory order sought pending the hearing and determination of the petition.

d. Whether the criminal proceedings against the 2nd Petitioner in Criminal Case No. E275 of 2021 – Republic –vs- Sadiki Leatoro should be stayed.

15. The circumstances facing the 2nd Respondent are similar to those of the 1st Respondent. The 1st and 2nd Respondents are siblings who are in occupation of the suit property by reason of being the sons of their late father whom they claim was entitled to be allocated the suit property. The 2nd Respondent has already been charged with forcible detainer by reason of his occupation. The court is of the opinion that the nature of the dispute over the suit between the 1st and 2nd Petitioners on one hand, and the 1st and 2nd Respondents, on the other is of a civil nature. The parties can only vindicate their property rights through the mechanisms established under civil law and not the criminal justice system. Accordingly, the court is inclined to grant the order of stay sought pending the hearing and determination of the petition.

H. Conclusion And Disposal

16. The upshot of the foregoing is that the court finds merit in the Petitioners' application for interim orders. Accordingly, the court makes the following orders for disposal of the notice of motion dated June 29, 2021:
- a. A temporary injunction be and is hereby granted restraining the 1st and 2nd Respondents from trespassing, alienating, fencing, or from evicting or interfering with the Petitioners' possession of Title No. Samburu/Suguta Mar Mar 'A'/1261 pending the hearing and determination of the petition.
 - b. An order of inhibition be and is hereby granted under Section 68 of the [Land Registration Act](#) 2012, to prevent any dealings with Title No. Samburu/Suguta Mar Mar 'A'/1261 pending the hearing and determination of the petition.
 - c. There shall be a stay of criminal proceedings in Maralal Criminal Case No E275 of 2021 – Republic vs Sadiki Leatoro on charges of forcible detainer of the suit property pending the hearing and determination of the petition.
 - d. A conservatory order be and is hereby granted restraining the 6th and 7th Respondents, their agents, servants or employees from harassing, arresting, detaining, prosecuting, or further prosecuting the 1st Petitioner on charges of forcible detainer of the suit property or any part thereof.
 - e. Costs of the application shall be in the cause.
- 17 Orders accordingly.

RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 23RD DAY OF JUNE, 2022.



In the presence of:

Mr Chebiego for the Petitioners

N/A for the 1st and 2nd Respondents

N/A for the Attorney General for the 3 – 7 Respondents

N/A for the National Land Commission – Interested Party

C/A - Carol

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Y M ANGIMA

JUDGE

