



**Oyieko v County Government of Kisumu & another (Environment & Land
Case E014 of 2022) [2022] KEELC 2558 (KLR) (15 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2558 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E014 OF 2022**

**A OMBWAYO, J
JULY 15, 2022**

BETWEEN

JOHN OYARE OYIEKO PLAINTIFF

AND

COUNTY GOVERNMENT OF KISUMU 1ST DEFENDANT

KISUMU CITY MANAGEMENT BOARD 2ND DEFENDANT

RULING

1. John Oyare Oyiek hereinafter referred to as plaintiff has come to court against County Government of Kisumu and Kisumu City Management Board for orders that pending the hearing and determination of this application inter-parte this court be pleased to issue temporary orders of injunction restraining the respondents, their agents and/or persons acting under their authority from occupying the stalls/premises/units illegally constructed by the defendants without consent/authority on the suit parcels LR 5/553, 180/111 and 416/166.
2. The application is based on grounds that the plaintiff is the registered owner of the three parcels LR 5/553, 180/111 and 416/166 for which he has registered titles and requisite search certificates from the ministry of Lands.
3. That without the consent and/or otherwise authority of the plaintiff and despite the applicant's written complaints, the respondents forcefully commenced construction work sometime in March 2020 and are now intent on inviting permanent occupants to the illegally constructed units on or about 1/05/2022 thereby further compromising the applicants right of usage and deriving economic benefit from his property.
4. There is an imminent and continuing threat of the applicant's proprietary rights under Article 40 of *the constitution* and of the consolidated *Land Act* being compromised as the respondents are using



the suit parcels which are private land as public land without compensation pursuant to compulsory acquisition.

5. In the supporting affidavit, the plaintiff states that he is the registered owner of the three parcels LR 5/553, 180/111 and 416/166 for which he has registered titles and requisite search certificates from the Ministry of Lands.
6. That there has existed an ownership dispute with the respondents in respect of the three suit parcels which measure about twenty (20) acres wherein the respondent officers have repeatedly ignored his pleas even as he has shown them his ownership documents and proof that the suit parcels belong to him.
7. That notwithstanding his consistent claim to ownership and the evidence that he submitted to the respondents, they commenced construction works sometimes in March 2020 with the construction of a perimeter wall and as a result of ignoring his complaint on site he instructed his counsel Otieno & Maina LLP who notified the respondents of their acts of trespass and that the suit parcels were private lands duly owned and registered.
8. That the respondents have had on going works over the parcel LR. 5/553 the respondents by constructing three open air structures specifically three large market shades, a large water tank built of stones and a store cum Coca-Cola soda depot which has always remained standing therein. That in LR 180/111 the respondents have constructed three open air shades and two toilets.
9. That in LR 416/166 the respondents have constructed two toilets and on-going structures of open shades and general earth disturbance through use of heavy machineries.
10. That the three parcels have been fenced with a stone wall reinforced with steel thereby enclosing two plots (5/553 and 416/166) completely and leaving one (180/111) outside.
11. The plaintiff is also aware that the respondents are putting up access roads over the said parcel which will amount to further trespass which is further compounded by the fact that they have closed the plot so that it is not possible for him to gain access.
12. That the plaintiff notes that this project is being done in an opaque nature in that they are operating in his plot without authority or otherwise his consent and yet they have not come up clear with a visible signage by the National Construction Authority which ought to clearly outline the project number and the consultants i.e. the Structural Engineers, Architectures, Quantity Surveyor, Mechanical and Electrical Engineer, Contractor and NEMA.
13. That the plaintiff is aware that the respondents intend to have traders settled on his parcel by the 1/05/2022 or thereabouts and to meet that objective they have come up with more containers which in essence would imply continuous trespass over his parcel. That he particularly blames the respondents for a series of breaches as he hereby enumerates:-
 - (a) Entering into his properties and purporting to develop the same without securing the consent or otherwise authority of the registered owner.
 - (b) Ignoring the fact that the suit parcels are private land by committing public funds thereto before carrying out proper due diligence.
 - (c) Purporting to exert proprietary rights over the suit properties while aware that it has neither acquired the same or/otherwise paid the requisite compensation attendant to the acquisition of private property for public use.



- (d) Failing in their obligation to act on his letter dated 25/06/2021 and received on June 29, 2021 notifying them of his ownership documents contrary to Article 10 (2) (a), 9b) and Article 232 (1) (c) of *the constitution* which envisages upon public offices the inculcation of the national values and principles of governance including the rule of law, social justice and human rights as well as the giving of a responsive, prompt and effective determination of complaints.
- (e) Purporting to have compulsorily acquired the suit land (private property) without any demonstration of a gazette notice for acquisition of these parcels, no notification to the plaintiff to secure his consent to the entry into the land by the defendants to carry out a survey, no gazette notice by the Commissioner of lands of intention to compulsorily acquire the suit parcels, no gazette notice for enquiry on the plaintiff before compensation was done or otherwise compensation to the plaintiff as envisaged under sections 3, 4, 6, 8 and 9 of the repealed *Land Acquisition Act* Cap 295 of the Laws of Kenya.
14. That the plaintiff knows that the suit parcels are prime property measuring about twenty acres and are valued at about Kshs 350,000,000 (Three Hundred and Fifty Million) per acre making a total valuation of about Kshs 7,000,000,000 (Seven Billion) as captured in the valuation report which he has filed. The defendants raised a Preliminary Objection on the basis that the suit is time barred having been filed after the expiry of 12 years.
15. Applications for temporary injunctions are determined on the basis of the principles set out in *Giella v Cassman Brown & Co Ltd* [1973] EA 358 at p. 360 where it was stated:-
- “First, 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 (EA Industries v Trufoods [1972] EA. 420.)”
16. In this case, the applicant has a prima facie case with a likelihood of success as he is the registered owner of the suit property.
17. However, the applicant is not likely to suffer irreparable damage if a temporary injunction is not granted as he can be compensated with damages. On a balance of convenience, the same tilts towards not granting an injunction as the plaintiff has come to court to stop the allocation of stalls and yet he should have come to court to pre-empt the construction of the stalls on the said parcel of land. I do decline to grant the orders sought for temporary injunction. Costs in the cause

DATED, SIGNED AND DELIVERED AT KISUMU THIS 15th DAY OF JULY, 2022.

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

