



REPUBLIC OF KENYA



KENYA LAW
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**Abdi v Kimemia & another (Environment and Land Case Civil Suit
168 of 2022) [2022] KEELC 12789 (KLR) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12789 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 168 OF 2022
LN MBUGUA, J
SEPTEMBER 30, 2022**

BETWEEN

MUSTAFA ABDI PLAINTIFF

AND

ANTHONY KIMEMIA 1ST DEFENDANT

JOSEPH KARIUKI 2ND DEFENDANT

RULING

1. Before me is an application dated May 11, 2022 in which the plaintiff seeks the following orders:

- “i. Spent.
- ii. Pending inter partes hearing and determination of this Application, a temporary order of injunction do issue restraining the Respondents by themselves, assigns, servants and/or agents or any other person claiming under them from encroaching upon, trespassing on, occupying, alienating, constructing, disposing, leasing out, transferring or registering or in any way whatsoever interfering with and or dealing with L.R. No. 29663 I.R. No. 168596, situate along City Council Flats Road, Buruburu Phase 1, Nairobi County, and the Officer Commanding Police Station be hereby directed to enforce the Order.
- iii. Pending inter partes hearing and determination of this Suit, a temporary order of injunction do issue restraining the Respondents by themselves, assigns, servants and/or agents or any other person claiming under them from encroaching upon, trespassing on, occupying, alienating, constructing, disposing, leasing out, transferring or registering or in any way whatsoever interfering with and or dealing with L.R. No. 29663 I.R. No. 168596,



situate along City Council Flats Road, Buruburu Phase 1, Nairobi County, and the Officer Commanding Police Division Buruburu and or the Officer Commanding Police Station, Buruburu Police Station be hereby directed to enforce the Order.

iv. Costs of this Application be borne by the Respondents.

2. The application is premised on the following grounds:

- i. The Applicant is the duly registered proprietor of L.R. No. 29663 I.R. No. 168596, situate along City Council Flats Road, Buruburu Phase 1, Nairobi County, and measuring approximately 0.0939 Hectares, hereinafter referred to as “the suit property” and has been in possession thereon since 1997.
- ii. The title to the suit property is held by the Applicant on a Leasehold Interest from the County Government of Nairobi through its predecessor the Nairobi City Council and as a consequence of the said acquisition, the Applicant became the duly registered Land Rates Payer for the property and has been duly remitting the same as and when demanded.
- iii. Without any justification, colour of right and or the Applicant’s consent, and in blatant disregard of the Applicant’s title to the suit property, the 1st Respondent has capitalized on his political leverage as a Member of County Assembly, in collusion with the 2nd Respondent to maliciously and illegally trespass thereon and has taken possession by forcefully removing the Applicant’s gate and padlock and erecting their own, with the intention of permanently depriving the Applicant of his ownership of the suit property.
- iv. The Respondents have with reckless abandon similarly proceeded to instruct goons and hirelings to invade and stay guard on the property, and the said goons have been illegally occupying the same, consequently blocking the Applicant’s access thereto, occasioning the Applicant untold risks, uncertainties, apprehensions, pecuniary loss of investment, inconveniences and embarrassment to the Applicant’s detriment.
- v. The Applicant stares at an imminent risk of losing the suit property in circumstances that raise reasonable illegality and ill intent to deprive him of the same. The Respondents are likely to use the suit property in a manner inimical to the Applicant’s interests thereon, having already commenced erection of temporary structures on the suit property with the intention to lease out the same to third parties.
- vi. The Applicant has a prima facie case with a probability of success in that he has a clear and unmistakable right to be protected which right is predicated on his legitimate title to the property which is being infringed by the Respondents calling for an urgent necessity to prevent the irreparable damage that will result from the infringement.
- vii. The Applicant is likely to suffer irreparable loss which cannot be compensated by an award of damages, for reason that the Respondents are constructing structures on the suit property with the intention to lease out the same



consequently titling the balance of convenience in favour of granting the orders sought.

- viii. The actions of the Respondents are manifestly and blatantly illegal and this Honourable Court must not countenance the patent illegalities.
 - ix. That unless the Honourable Court moves with haste and alacrity to make an urgent and expeditious order stopping the said illegal interference, construction and trespass, directed at the Officer Commanding Station/ Officer Commanding Police Division, Buruburu Police Station to evict Respondents and their agents from the suit property pending the hearing and determination of this Application and Suit, the Applicant stands to suffer loss of the suit property to its irreparable detriment.
 - x. It is just and fair that an order be given restraining the Respondents from interfering with the suit property as failure to do so will render this suit nugatory and will cause grievous injury upon the Plaintiff/Applicant.”
3. The applicant has also sworn a supporting affidavit reiterating the grounds in support of the application adding that in January 2019, he gave consent for the suit property to guarantee Simba Contractors Limited to secure a credit facility of sh. 15 million from First Community Bank Limited.
 4. The Applicant has also availed various documents to support his case including certificate of title and lease to the suit property, rate payment documents, an Occurrence Book report, photographs to the suit property, deed of guarantee and indemnity, as well as a valuation report.
 5. The 1st Respondent opposed the application via his Replying Affidavit dated June 16, 2022. He denies all the averments made by the applicant including having any interest in the suit land.
 6. The second Respondent opposes the application via his Replying Affidavit dated July 12, 2022. He contends that the lease in possession of the applicant is in respect of three parcels of land initially owned by the Nairobi City County Government but issued by the National government. That the lease in issue is a precursor to the issuance of a certificate of title which of necessity include; a deed plan, and it could not have been issued without the participation of Nairobi City County Government and the said lease could not be generated without authorization of a surveyor having undertaken a survey and drawing a deed plan pursuant to a letter of allotment.
 7. He contends that the plots covered by the lease exhibited by the plaintiff on the ground are plots R1, R2 and R3 in Buru Buru infills and the existence of the lease means the plots were amalgamated, yet the 2nd Respondent is the duly registered owner of the aforementioned plots R1, R2, and R3. The 2nd Respondent has exhibited allotment letters showing that allotment occurred on October 2, 2008. He had bought the plots from the previous allottee and has been in occupation of the land for the last five years and he has put up a permanent building on the suit property worth sh. 30 000 000, of which he resides there on with his family.
 8. I have considered all the arguments presented before this court by way of affidavits as well as the submissions of the Applicant. To grant or not to grant the injunctive orders sought is the issue for determination. – See *Gieva vs. Cassman Brown & Co. Ltd.*



9. In *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] Eklr, the court held that;

“An injunction is an equitable remedy, meaning the court hearing the application has discretion in making a decision on whether or not to grant the application. The court will consider if it is fair and equitable to grant the injunction, taking all the relevant facts into consideration.”

10. I find that both the applicant and 2nd Respondent are asserting a claim of ownership to the suit property, whereby the applicant is displaying a title on one hand, while the 2nd Respondent has allotment letters. In the case of *Virginia Edith Wambui vs. Joash Ochieng Ogo* Civil Appeal No. 3 of 1987 [1987] eKLR cited in *Elizabeth Muthoni Hussein V Virkesb Jinit Shah* [2018] eKLR the court stated that:

“The general principle which has been applied by this court is where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided on a trial”

11. In *Daniel Gitau & 227 others V. Mary Ruguru Njoroge* [2020] eKLR the court stated that:

“The order for the maintenance of status quo therefore meant that things were to remain as they were as at the date of the delivery of the Ruling. If the Defendant or the Plaintiffs had already put up structures on the suit property, the said structures were to remain intact pending the hearing and determination of the suit”.

12. This court does not wish to deal with contented issues of facts at the interlocutory stage. Thus the appropriate orders to give is the maintenance of status quo.

13. Thus the application is declined and status quo is to be maintained until further orders are given by the court or until the suit is determined. The costs there of should abide to outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Olaho for the Applicants

Gikonyo holding brief for Thuita for 1st Respondent

Court Assistant: Joan

