



Amani Trustees Limited v Gakuya & 2 others (Environment & Land Case E211 of 2022) [2022] KEELC 13271 (KLR) (30 September 2022) (Ruling)

Neutral citation: [2022] KEELC 13271 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E211 OF 2022
LN MBUGUA, J
SEPTEMBER 30, 2022**

BETWEEN

AMANI TRUSTEES LIMITED APPLICANT

AND

JAMES MWANGI GAKUYA 1ST RESPONDENT

MARVIE SAFARIS LIMITED 2ND RESPONDENT

RIKANA SUPERMARKETS LIMITED 3RD RESPONDENT

RULING

1. Before me is a Notice of Motion application dated 21.6.2022 in which the plaintiff seeks orders: that pending the hearing and determination of this application and the suit, this Honourable Court be pleased to grant an order of temporary injunction restraining the Defendants/Respondents whether by themselves, their employees, proxies, servants, agents or any other persons acting under their authority/direction from disposing, selling, advertising for sale, auctioning, trespassing, occupying, entering upon, remaining thereon, constructing/erecting or carrying on with construction/erection of any structure(s), buildings(s), fence, perimeter wall, or from howsoever dealing with and/or interfering with the Plaintiff's possession, occupation and/or proprietorship of all that parcel of land known as L.R. No. 209/12002, along Jogoo Road, in Nairobi County registered in the name of Amani Trustees Limited. The applicant also prays for costs of the application.
2. The grounds in support of the application are that the applicant is the registered owner of the suit land L.R No. 209/12002 situated along Jogoo Road and he has a certificate of title to that effect. That the 1st and 2nd defendants in company of hooligans and mobsters armed with all manner of crude weapons have unlawfully and illegally invaded the suit land and have commenced the erection of make shift structures.



3. That there have been previous invasions on the suitland for instance on 4.9.2014, but applicant managed to evict the invaders on 6.9.2014. The invasion persisted and the applicant served a three month Eviction Notice upon the Respondents and their agents on 16.10.2020 and upon the lapse of the aforementioned period, the applicant took possession of the land on 29.1.2021.
4. That in the months of October and November 2021, and the better part of year 2022, the Respondents have greatly escalated their attempts aimed at dispossessing the applicant of his land by deployment of hooligans on site.
5. The applicant contends that he stands to suffer great harm if the orders sought are not granted.
6. The application was served but no responses were filed.
7. The question for determination is whether the injunctive orders sought by the plaintiff are merited. The principles for grant of interlocutory injunctions were comprehensively set out in the case of *Giella v Cassman Brown Co Ltd* [1973] EA 358 and reinforced by the Court of Appeal case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* (2014) eKLR. As was set out in the above named cases, a party needs to show that they have a prima facie with a probability of success for the courts to grant injunctive orders, and that he stands to suffer irreparable loss where an award of damages would not be an adequate compensation.
8. A perusal of the applicants documents annexed to the supporting affidavit reveals that the applicant has a Certificate of Title to the suit land. Thus the applicant has established that he has a legal right over the suit property.
9. The photographs availed by the applicant as annexure ARJ -02 indicates that there is some kind of early stages of construction activities. There is an iron sheet fence of which inside that fence, one can see construction stones, wheel barrows, drums et al; all these are gadgets and or materials for construction. Such construction would ultimately change the face of the land. The damage/loss that may be suffered by the applicant cannot certainly be quantified hence, an award of damages is not an appropriate remedy.
10. In the circumstances and noting that whatever kind of activities being undertaken on the suit land appear to be at the infancy stage, I do allow the application with a rider that the orders of injunction granted shall remain in force for a period of One Year only.

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

LUCY N. MBUGUA

JUDGE

In the presence of:-

Bob Otieno for the Applicant

Court Assistant: Joan

