



**Sheikh v Yedah & 3 others (Environment & Land Case E152 of 2022)
[2022] KEELC 13333 (KLR) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13333 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E152 OF 2022
LN MBUGUA, J
SEPTEMBER 30, 2022**

BETWEEN

ABDULLAHI MOHAMED SHEIKH APPLICANT

AND

ESHMAEL AFANDA YEDAH 1ST RESPONDENT

ABDIKARIM JAMA 2ND RESPONDENT

AFRICAN INLAND CHURCH (PASTOR MUNDE) 3RD RESPONDENT

NAIROBI CITY COUNTY 4TH RESPONDENT

RULING

1. Before me is an application dated 22.4.2022 where the Plaintiff/Applicant seeks the following orders:
 1. That this application be certified as urgent and direction be given as to its hearing.
 2. That pending the final, determination of this suit, the Honourable Court be pleased to issue restraining order against the Defendants whether acting by themselves, their principles, goons from the outlawed “kamjesh-militia, servants, contractors, guards and workmen or whomsoever from entering, trespassing, alienating, constructing, excavating, harvesting and or dumping soil, dealing, transferring and or in otherwise interfering with the suit property being Plot No. 44 & 45 (Part Of Lr No. 209/7260/207 & Lr No. 209/7260/208/eastleigh, Section Iii Sewarage Area Nairobi Countypending the hearing and determination of this application.
 3. That, pending the final/determination this suit, the Honourable Court be pleased to issue restraining orders against the Defendants whether acting by themselves, their principals, goons from the outlawed “kamjeshi militia, servants, contractors, guards and workmen or whomsoever from entering, trespassing, alienating, constructing, excavating, harvesting and or dumping soil, transferring and or in otherwise interfering with the suit property being Plot



No. 44 & 45 (Part Of Lr No. 209/7260/207 & Lr No. 209/7260/208/eastleigh, Section Iii Sewerage Area Nairobi County pending the hearing and determination of this suit.

4. That, the officer commanding (OCPD) California Police Station Eastleigh or any Police Station does oversee the implementation and compliance of this.
 5. That, the cost of this application be provided for.
2. The grounds in support of the application are;
1. That, the Applicant is the legal and rightful owner of the suit property.
 2. That, on 5th July 2006 and 28th January 2008, the Applicant did purchase the suit properties known as Plot No. 44 & Plot No. 45 (part of L.r No 209/7260/207 & L.r No 209/7260/208 – Eastleigh, Section Iii Swerage Area Nairobi County From Rose Wangithi Mbugi And Martion Mutugi (former allottees) respectively vide sale agreements.
 3. That, the Applicant together with the former allottees did clear all outstanding payments to the 3rd Defendant including domestic building-residential permits and licenses, construction site-board charges, occupation certificates fees, payment for infrastructure.
 4. That, on 5th of May 2011 the Applicant did successfully register the lease with the City County of Nairobi.
 5. That, on the 8th June 2012 vide a meeting at the City Council of Nairobi at the Council chambers, City Hall, Nairobi, the building plan for the suit properties were approved.
 6. That, the Applicant did apply for registration and did successfully get documents of registration for the suit properties.
 7. That, vide a letter dated 17th March 2016 by the Nairobi City County to the Commissioner of Lands 3rd Defendant did approve the amalgamation and forwarded it for issuance of Title Deed to the Applicant.
 8. That, at all material time the Applicant has been making all payments as pertains to rates, amalgamation and development of the suit properties.
 9. That, on or about the month of February 2019 the 1st and 2nd Defendants have trespassed into the applicant's property without any authorization or consent from the Applicant and have proceeded to construct kiosks and shanty temporary structures on the said parcel of land.
 10. That the 1st and 2nd Defendants are strangers to the Applicant.
 11. That, the Applicant is being denied his peaceful occupation of his property and he endeavors to begin construction.
 12. That, if the orders prayed for herein are not granted the Applicant stands to suffer irreparable loss and damage.
 13. That, the Court has discretion to grant the orders prayed herein, it is fair and just that this application be allowed and the orders sought hereby granted to obviate imminent prejudice, losses and difficulties to the Applicant.
3. The applicant has also sworn a Supporting Affidavit.



4. The application was served but no responses were filed. The application is hence unopposed, nevertheless, the court has to consider the merits of the said application _ See [Tullow Oil PLC & 3 Others V. PS Ministry of Energy & 15 others](#) (2020) eKLR.
5. To grant or not to grant the injunctive orders sought is the question falling for determination. The relevant applicable law is Order 40(1)(a) and (b) of the [Civil Procedure Rules](#) 2010, where it is stipulated that:-

“Where in any suit it is proved by affidavit or otherwise—

 - (a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - (b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”
6. The conditions for consideration in granting an injunction were set out in *Giella vs Cassman Brown & Company Limited* (1973) EA 358; That an applicant must establish a prima facie case with likelihood of success. The applicant must also establish that he would suffer irreparable damage that will not likely be compensated by an award of damages. If the court shall be in doubt, it shall determine the case on a balance of convenience.
7. The law has developed in this area as was held in the case of [Jan Bolden Nielsen vs. Herman Phillipus Steya also Known as Hermannus Phillipus Steyn & 2 Others](#) (2012) eKLR where Mabeya J stated as follows:-

“I believe that in dealing with an application for an interlocutory injunction, the court is not necessarily bound to the three principles set out in the Giella Vs Cassman Brown case. The court may look at the circumstances of the case generally and the overriding objective of the law....”
8. 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.”
9. The applicant has availed various documents particularly the land sale agreements, rates and ground rent payment receipts to show that he has an interest in the suit land.
10. In ground number 9 of the application, the applicant contends that in February 2019, the 1st and 2nd defendants trespassed onto the suit land and proceeded to construct kiosks and shanty temporary structures there on. A perusal of the photographs availed by the applicant on the digital platform reveals



that the area is built up. One can see old iron sheet structures, there is a blue metal gate, and there are many clothes hanged on the clothe's lines.

11. This is certainly a dwelling place, and in such circumstances the grant of the orders sought would amount to eviction of the occupants therein. Noting that the trespass occurred more than 3 years ago in year 2019, I find that the best recourse is for the suit to be fast tracked to be heard on merits. The end result is that the application is dismissed with no orders as to costs.

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

LUCY N. MBUGUA

JUDGE

In the presence of:-

Amandi for the 4th Respondent

Kemunto holding brief for Maosa for Plaintiff

Court Assistant: Joan

