



Catholic Diocese of Homabay & another v County Land Management Board & 2 others (Environment & Land Case 131 of 2017) [2022] KEELC 14476 (KLR) (27 September 2022) (Ruling)

Neutral citation: [2022] KEELC 14476 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT & LAND CASE 131 OF 2017
MN KULLOW, J
SEPTEMBER 27, 2022**

BETWEEN

CATHOLIC DIOCESE OF HOMABAY 1ST PLAINTIFF

BOARD OF MANAGEMENT ST. JOSEPH'S SCHOOL, RAPOGI 2ND PLAINTIFF

AND

COUNTY LAND MANAGEMENT BOARD 1ST DEFENDANT

COUNTY GOVERNMENT OF MIGORI 2ND DEFENDANT

NATIONAL LAND COMMISSION 3RD DEFENDANT

RULING

1. By Notice of Motion dated February 22, 2022 the 1st Defendant/ Applicant sought for the following orders: -
 - a) Spent.
 - b) That pending the hearing and determination of this Application this Honorable Court be pleased to restrain the Inspector General of Police, the OCPD, Uiri Police Division and Officers under his command from interfering with the 1st Defendant's enjoyment and peaceful occupation of parcel No Kanyamkago/ Katieno/ 23 the suit property.
 - c) That pending the hearing and determination of this suit this Honorable Court be pleased to restrain the Inspector General of Police, the OCPD, Uiri Police Division and Officers under his command from interfering with the 1st Defendant's enjoyment and peaceful occupation of parcel No Kanyamkago/ Katieno/ 23 the suit property.



- d) That this Honorable Court makes such orders or further relief that it may deem just and expedient to grant for the justice to be met in the circumstances.
- e) Costs of this Application be borne by the Plaintiffs/ Respondents.
2. The application is premised on 15 grounds thereof and on the Supporting Affidavit sworn by Matiko Mang'era; the County Attorney and the Principal Legal Advisor of the 1st Defendant. The applicant avers that the 1st Defendant is the legal and registered proprietor of the suit property with indefeasible title; having taken over the assets and liabilities from its predecessor South Nyanza County Council. The 1st Defendant is therefore in possession and occupation of the said land save for the portion encroached by the plaintiffs.
 3. It is his claim that the Inspector General of Police through the OCPD Uriri Police Division and police officers under his command have without any color of right or justification harassed and interfered with the 1st Defendant's quiet and peaceful possession of the suit property. That as a result of the police irritation and terrorization, the said police officers without authority have forcibly restricted and infringed on the 1st Defendant's right over the suit property thereby necessitating the intervention of this court.
 4. It is the Applicant's assertion that there is no valid court order issued by the court which obligates the Inspector General of Police to enforce compliance and therefore the police are acting at the behest of the plaintiff to perpetuate impunity. That the status quo orders alleged by the plaintiffs automatically lapsed by effluxion of time as per Order 40 Rule 6.
 5. The Applicant is now apprehensive that, having secured a Grant from the World Bank for the construction of Rapogi – Ultra Modern Market, washrooms and cabro paving of paths within the market for the benefit of the residents and to improve the infrastructure in the area, the said grant risks being cancelled owing to the actions of the Inspector General and his police officers who are delaying the performance of the contract hence the instant Application.
 6. It is therefore his contention that the 1st Defendant needs protection from the court against the unwarranted harassment from the police and any interference on its property as the registered owners of the suit parcel thus having exclusive rights to the land to the exclusion of others. He urged the court to allow the Application.
 7. The application was opposed. The 1st Plaintiff/ Respondent filed a Replying Affidavit sworn by Fr. John Abraham Ayieko, the Diocesan Secretary of the 1st Plaintiff on March 21, 2022 on his own behalf and on behalf of the 2nd Plaintiff/ Respondent. He avers that at the time of filing the suit, the Plaintiff simultaneously filed an Application dated October 7, 2015 seeking temporary injunction. On October 12, 2015, the court issued temporary order of status quo in respect of the suit property and directed that there should be no subdivision, alienation or transfer by any party and no further developments of a permanent nature pending the hearing and determination of the Application. Further, on October 16, 2016 when the matter came up for pretrial directions; the court confirmed the status quo order will hold until the hearing and determination of the suit.
 8. However, in utter disregard of the said orders of status quo, on January 5, 2022 the 1st Defendant/ Applicant caused to be printed and circulated to the residents of Rapogi a document titled "Public Participation Questionnaire for the Proposed Rapogi Ultra-Modern Market" and printed a banner with the words "Proposed Rapogi Ultra- Modern Market funded by the World Bank through Migori County Government". In addition, the governor of Migori County Hon Zachary Okoth Obado



stormed into the suit property on diverse occasions in the company of goons to try and forcibly take over the suit property in order to undertake the construction of the said ultra- modern market.

9. As a result of the actions by the 1st Defendant of interfering and invading the suit property despite there being a court order, the police intervened to maintain law and order.
10. With regard to the Grant from the World Bank as alleged by the Applicant; it is the Respondent's assertion that there is no proof that the world bank has granted any such funding to the 1st Defendant and further, if the same was granted then the 1st Defendant misled the World Bank into approving the funding of a project on the land in dispute. It was further his claim that the 1st Defendant cannot purport to do a project for the benefit of the residents of Awendo Municipality by contravening a court order and tramping over the rights of the Plaintiffs in the process.
11. It is the Respondent's position that should the orders sought by the Applicant be granted, the same will counter the status quo orders earlier ranted by the court.
12. The Application was canvassed by way of written submissions. Both the 1st Defendant/ Applicant and the Plaintiffs/ Respondents, filed their respective submissions which I have read and taken into consideration.

Analysis And Determination

13. It is my considered opinion that the issues arising for determination are as follows: -
 - i. Whether the interlocutory orders of Status Quo are still valid and effective.
 - ii. Whether the Applicant is entitled to the reliefs sought.
14. The Applicant herein sought restraining Orders against the Inspector General of Police through the OCPD, Uriri Police Station and its Officers from interfering with its enjoyment and peaceful occupation of the suit property. It is his assertion that there is no valid court order which obligated the police to enforce compliance and thus maintained that the Police are acting without any right or justification and their actions are aimed at harassing and interfering with their occupation.
15. The Applicant further contends that the status quo orders relied on by the Respondents automatically lapsed by effluxion of time and consequently, there are no active orders capable of enforcement by the police. It is their claim that the interim orders of status quo lapsed at the end of 12 months from the time they were issued the same have never been renewed and further that the suit herein upon which they were granted has not been resolved within the 12 months. Therefore, in the absence of any application to extend their life beyond the 12 months, there is no valid court order capable of enforcement.
16. The Respondent on the other hand maintained that there is a valid court order of status quo, which barred any subdivision, alienation or transfer of the suit property and further developments of permanent nature on the suit property pending the hearing and determination of the main suit which was issued on the October 16, 2016 by Mutungi J. He therefore urged the court to dismiss the Application as allowing the same would be contrary to the order of status quo.
17. I have perused the court record, particularly the proceedings of the October 16, 2016 and I wish to reproduce the orders and directions issued by my predecessor on the said date;

“as the parties have substantively complied with Order 11 of the CPR, the matter is certified for hearing and that parties may take a hearing date at the court registry. Parties are granted



leave to file any supplementary documents and/or further witness statements within the next 45 days. The Order for Status Quo will remain in force until the suit is heard and determined.”

18. The purpose of an Order of Status Quo was explained in the case of *Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR*, as follows: -

“..... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

19. It is the Applicant’s assertion that the Respondents’ are taking advantage of the orders of status quo issued in their favor to infringe their rights over the suit property. He further contends that the matter has never been concluded since 2016 when the said interim orders were issued. This court has taken the liberty to peruse the court record to ascertain the various steps taken by the parties herein to have the matter determined.
20. The suit was transferred to Migori Law Courts in the year 2018 and thereafter I have noted that there were several adjournments on account of compliance with Order 11 before the matter was finally fixed for hearing on the July 16, 2020. On the scheduled date; the same did not proceed owing to the prevailing circumstances at the time caused by the pandemic and which this court takes judicial notice of. I have also noted that other adjournments were caused by circumstances beyond the control of the either of the parties.
21. From the above it is evident that there has never been any willful delay on the part of the plaintiffs to prosecute the matter. To the contrary, all the adjournments over the years have always been allowed after sufficient explanation and justification. It is therefore not true that the plaintiffs are intentionally delaying the matter to enjoy the interim orders in their favor to the detriment of the defendants as alleged by the Applicant. The exception under Order 40 Rule 6 is where there is a sufficient reason, explanation and/or justification, the court may order the validity of interlocutory orders after the 12 months’ period.
22. In view of the foregoing, I find that the interlocutory status quo orders issued by Mutungi J. issued on the October 16, 2016 are still valid and effective orders capable of execution and/or enforcement and all parties herein are bound by the same pending the hearing and determination of the suit. Court orders are not issued in vain and must be obeyed and complied with at all times.
23. The second issue for determination is whether the Applicant is entitled to the reliefs sought and I will seek to determine the same based on the respective Affidavits filed herewith;
24. The Applicant contend that they are the lawful owners of the suit property and are entitled to all the rights thereto to the exclusion of all others. That they have been awarded a Grant by the World Bank for the construction of Rapogi Ultra-Modern Market on the suit property for the benefit of the area residents. It is their case that the police without any color of right or justification have interfered with their occupation and use of the suit property. They now urge the court to restrain the police from causing any interference on their occupation and use of the suit property as they undertake the construction of the said ultra-modern market.
25. The Respondents on the other hand maintained that the involvement of the police was in order to maintain law and order and ensure compliance with the valid court orders issued on October 16, 2016. It is their claim that on several occasions; the Applicant through its Governor, Zachary Obado in the



company of goons, had tried to forcefully take over the suit property for purposes of constructing the ultra-modern market and thus they had to seek the assistance of the law enforcement. It is further their contention that the Applicants ought to have informed 3rd parties in any dealings with the suit property of the dispute herein. They thus urged the court not to grant the orders sought as the same would be contrary to the status quo orders earlier issued.

26. I wish to restate that the orders issued on the October 16, 2016 by Mutungi J. in final determination of the Application dated October 7, 2015 are active orders; the same have neither been set aside, varied nor appealed against. Thus, the effect of the orders sought herein, if allowed would be tantamount to allowing an appeal of the orders of Mutungi J. The averments by the Applicants that the orders have automatically lapsed by effluxion of time are misguided. Further, the Applicant's contention that it is the lawful owner of the suit property is a matter that can only be determined upon hearing of the main suit, adducing evidence by both parties and a determination thereof on merit. The main issue at the center of the suit herein is on the ownership of the suit property LR No Kanyamkago/ Katieno/ 23. It is therefore my considered opinion that the Orders sought by the Applicant are untenable.

Conclusion

27. In the upshot, I accordingly find that the Application dated February 22, 2022 is not merited and is hereby dismissed with costs to the Respondents. I further direct that the orders status quo issued on October 16, 2016 be observed; there should be no subdivision, alienation, transfer and/or any further developments of permanent nature whatsoever on the suit property, pending the hearing and determination of the suit. The Plaintiffs are hereby directed to fix the matter for hearing on priority basis.

It is so ordered.

DATED, SIGNED AND DELIVERED IN VIRTUALLY AT MIGORI ON 27TH DAY OF SEPTEMBER, 2022.

MOHAMMED N KULLOW

JUDGE

Ruling delivered in the presence of: -

Non-Appearance for the Plaintiffs/ Respondents

Non-Appearance for the 1st Defendant/ Applicant

Non-Appearance for the 2nd & 3rd Defendants

Tom Maurice- Court Assistant

