



REPUBLIC OF KENYA



**Kensalgreen Limited v Ngoa & 12 others (Environment & Land Case
98 of 2019) [2022] KEELC 4824 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4824 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 98 OF 2019**

**JO OLOLA, J
SEPTEMBER 22, 2022**

BETWEEN

KENSALGREEN LIMITED PLAINTIFF

AND

NGUMBAO NGOA 1ST DEFENDANT

NGOWA MWARINGA 2ND DEFENDANT

LIGHT OF GOD CHURCH 3RD DEFENDANT

SADAKA KARISA THOYA 4TH DEFENDANT

ZAWADI MTAWALI MADEVU 5TH DEFENDANT

STEPHENE KARISA CHARO 6TH DEFENDANT

EMMANUEL MWANGALA 7TH DEFENDANT

ANDREW OLOO 8TH DEFENDANT

KINGI JOSHUA 9TH DEFENDANT

ABDALLA LEWA 10TH DEFENDANT

KARISA KINGI 11TH DEFENDANT

MWANA TSUMA 12TH DEFENDANT

KAZUNGU DAVID 13TH DEFENDANT

RULING

1. By the Notice of Motion dated November 18, 2019 and filed herein on November 19, 2019 Kensalgreen Limited (the Plaintiff) prays for an order that this Honourable Court be pleased to



issue an interim injunction restraining the Defendants whether by themselves, their agents and/or servants from entering upon, removing from, wasting, digging on, excavating, fencing and erecting any structures whatsoever on the suit properties namely Title Numbers Chembe/Kibabamshe/189, 190, 191, 212, 214, 215, 216, 217, 218 and 219 respectively, pending the hearing and determination of this suit. The Plaintiff also wants the Court to direct the OCS Kizingo Police Station to enforce and ensure compliance with the said orders.

2. The application is supported by an affidavit sworn by the Plaintiff's director Laura Lenzi and is based on the following grounds:
 - (i) That the Plaintiff is the registered proprietor of the suit property;
 - (ii) That the Defendants have without any colour of right or the Plaintiff's consent entered the suit properties and remain thereon;
 - (iii) That as a consequence of the Defendants illegal acts and trespass, the Plaintiff has not only been deprived of quiet possession of the suit properties but also an opportunity to develop the said properties;
 - (iv) That the Defendants have constructed and continue to construct illegal structures on the suit properties much to the detriment of the Plaintiff; and
 - (v) That it is in the interest of justice that the prayers sought are granted.
3. The application is opposed by the 13 Defendants. In a Replying Affidavit sworn on their behalf by the 2nd Defendant Ngowa Mwaringa and filed herein on January 17, 2020, the Defendants aver that they together with others who have not been sued herein have been in occupation of the suit properties since time immemorial as the same were previously occupied by their forefathers.
4. The Defendants aver that a casual perusal of the Title Deeds annexed to the Plaintiff's Supporting Affidavit shows that the same were issued in a marathon one month's time and therefore the same ought to be scrutinized.
5. The Defendants further aver that due to endemic problems bedeviling land occupation and ownership in Chembe/Kibabamshe and Kilifi Jimba registration section, the Ministry of Lands established a Special Task Force which in a report released in June, 2010 recommended steps to be taken to resolve the problems affecting land ownership in the area and they therefore urge the Court not to grant the Plaintiff's prayers.
6. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Counsel for the Plaintiff. I was unable to find any submissions on the part of the Defendant.
7. The Plaintiff herein prays for an order of injunction to restrain the 13 Defendants from entering upon, removing from, wasting, digging on, excavating, fencing or erecting any structures on the suit properties pending the hearing and determination of the suit herein. It is the Plaintiff's case that it is the registered proprietor of the suit properties. The Plaintiff accused the Defendants of wrongfully entering the suit properties and remaining thereon without any colour of right and/or its consent.
8. On their part the Defendants aver that the properties devolved to them through inheritance and that they have been in possession of the suit properties from time immemorial. The Defendants accuse the Plaintiff of rushing to register itself as the owner of the suit properties within one month while aware of the Defendant's possession thereof and call for a scrutiny of the title deeds issued to the Plaintiff.



9. The principles for consideration before the Court can grant an interim order of injunction were well set out in the oft-cited case of *Giella -vs- Cassman Brown & Company Limited* (1973) EA 258 where the Court stated thus:

“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.”

10. As to what would amount to a prima facie case, the Court of Appeal offered guidance in *Mrao Limited -vs- First American Bank of Kenya Limited & 2 Others* (2003) eKLR whereby it was held that:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

11. In the matter before me, the Plaintiff has exhibited titles of the 10 parcels of land in contention showing they are registered in its name. A perusal thereof reveals that all the titles were issued in the name of the Plaintiff between 4th July, 2007 and 30th July 2007.

12. While the Plaintiff asserts that the Defendants have invaded the suit properties and thereafter refused to vacate the same, there is nowhere in the application where the Plaintiff indicates the date when the alleged invasion and/or trespass commenced. Given the Defendant’s position that they have always been on the suit property, it was imperative upon the Plaintiff to point out with clarity the exact date or period of invasion.

12. I say so because in support of their case, the Defendants have annexed a copy of a letter dated January 19, 2007 which appears to indicate that some six (6) months before the properties were registered in the name of the Plaintiff, there was a dispute concerning the same and involving some of the Defendants herein.

13. It is also to be noted that by the Plaintiff’s own admission, the Defendants have built structures upon and are residing on portions of the suit land. That being the case, it was clear to me that if this Court were to proceed to grant the injunction in the manner sought herein, the same would have the effect of evicting the Defendants from the suit land before the Court can investigate who between them and the Plaintiff is the rightful owner of the land.

14. In the premises, I did not find any merit in the application. The same is dismissed with the costs in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYERI VIA MICROSOFT TEAMS THIS 22ND SEPTEMBER, 2022.

In the presence of:

No appearance for the Applicant

No appearance for the Respondents

Court assistant - Kendi

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J. O. OLOLA
JUDGE

