



**Syokimau Residents Association v Pinnacle Development Limited & 121 others;  
National Land Commission & another (Interested Parties) (Environment & Land  
Case E092 of 2021) [2022] KEELC 14591 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14591 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E092 OF 2021  
CA OCHIENG, J  
OCTOBER 31, 2022**

**BETWEEN**

**SYOKIMAU RESIDENTS ASSOCIATION ..... PLAINTIFF**

**AND**

**PINNACLE DEVELOPMENT LIMITED & 121 OTHERS ..... DEFENDANT**

**AND**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**COUNTY PHYSICAL PLANNER, MAVOKO SUB COUNTY .... INTERESTED  
PARTY**

**RULING**

1. What is before court for determination is the plaintiff's Notice of Motion Application dated the October 19, 2021 where it seeks the following orders:
  1. Spent
  2. Spent
  3. That temporary injunction be and is hereby issued against the 1<sup>st</sup> to 120<sup>th</sup> defendants/respondents jointly and severally by themselves, their servants and/or representatives stopping all construction works on land parcels being Land Reference Numbers: 12715/267, 12715/207, 12717, 12715/255, 12715/256, 12715/414, 12715/409, 12715/447, 12715/700 and 12715/189 or any resultant sub divisions thereof within Syokimau, Machakos County Mavoko Sub County pending the hearing and determination of this suit.
  4. Spent



5. That the 2<sup>nd</sup> interested party be and is hereby directed to suspend any development approval with respect to Land Reference Numbers: 22715/267, 12715/207, 12717, 12715/255, 12715/256, 12715/414, 12715/409, 12715/447, 12715/700 and 12715/189 or any result sub divisions thereof pending the hearing and determination of this suit.
  6. That Officer Commanding Police Division, Mlolongo Police Station be and is hereby directed to ensure the above orders are enforced.
  7. Spent
  8. That an order of inhibition to issue stopping further dealings, registration and transactions over Land Reference Numbers: 22715/267, 12715/207, 12717, 12715/255, 12715/256, 12715/414, 12715/409, 12715/447, 12715/700 and 12715/189 or any result sub divisions thereof pending the hearing and determination of this suit.
  9. That Plaintiff, this Application and supporting affidavit together with any ex parte order this Honourable Court may deem fit to grant be served upon the defendants/respondents within 14 days.
  10. That cost of this Application be in the cause.
2. The Application is premised on the grounds on the face of it and the supporting affidavit of John Mutinda, its Chairperson. The plaintiff contends that the following parcels of land being 2715/267, 12715/207, 12717, 12715/255, 12715/256, 12715/414, 12715/409, 12715/447, 12715/700 and 12715/189 hereinafter referred to as the 'suit lands', were designated for public use which has been subject to investigation by the 1<sup>st</sup> interested party, that is yet to issue a recommendation. They claim the suit lands have been irregularly acquired by the 1<sup>st</sup> to 120<sup>th</sup> Respondents, Land Reference number 2715/267 has been subdivided and allocated to various private persons being the 5<sup>th</sup> to 123<sup>rd</sup> defendants. Further, Land Reference Number 2715/207 which was originally owned by the 1<sup>st</sup> respondent has been subdivided and new titles issued being Land Reference 12717 in the name of the 5<sup>th</sup> Respondent. They aver that some of the parcels being Land Reference Numbers 12715/267 and 12717 (original 12715/207) are currently in the process of being developed. They explain that, in order to preserve the said parcels of land, the 1<sup>st</sup> interested party wrote to the 120<sup>th</sup> defendant vide its letter dated the 18<sup>th</sup> February, 2020, to place a restriction on the aforementioned parcels of land until it issues, its recommendations. Further, that the continued development on the said parcels of land is in flagrant disregard of the letter dated the February 18, 2020.
  3. The defendants opposed the instant Application by filing various replying affidavits, explaining how they acquired their respective parcels of land and annexing their Certificates of Title.
  4. The 1<sup>st</sup> defendant's director Mungai Ngaruiya in his Replying Affidavit explains that the subdivision of the Syokimau Farm Ltd was completed before 1985 and when the new board took over in January 1985, its role was to ensure titles were handed over to the members. He avers that he was a member of Syokimau Farm Limited and purchased property which he later registered in the name of the 1<sup>st</sup> defendant. Further, that offers for sale of commercial properties were made on November 24, 1988 vide Daily Nation and Taifa Leo Newspapers. He avers that titles for parcel numbers 12715/207 and 12715/189 were issued on the April 16, 1996. Further, that both LR Nos. 12715/207 and 12715/189 were transferred to the name of Pinehurst Valley Ltd on the February 23, 2021. He reiterates that the plaintiff has not tendered evidence of any approved plan issued in 1988 or thereabout indicating that properties they own, are public land. He confirms that parcel number 13323/59 was sold to the 1<sup>st</sup> defendant by Mr. Ndetei on March 3, 1997.



5. The 2<sup>nd</sup> defendant vide a replying affidavit sworn by Ramji Devji Varsani, its Managing Director deposes that it is the owner of LR No. 12715/255 and 12715/256 respectively which it acquired in August, 2001 from Syokimau Farm Ltd. He denies the said parcels of land are public land. He avers that the Plaintiff has instituted a duplicity of suits on the same cause of action, having filed Machakos ELC JR No. 140 of 2021, ELC No. 14 of 2021 and now the instant suit. Further, that this matter is now sub judice.
6. The 8<sup>th</sup> defendant through its director James Mwangi Wainaina in his affidavit states that the subdivision of the Syokimau Farm Ltd was completed before 1985. He confirms that the 8<sup>th</sup> defendant purchased LR No. 13323/47 and a title was issued on August 10, 1994. He further reiterates the averments of the 1<sup>st</sup> Defendant in respect to advertisements that were made by Syokimau Farm Ltd in respect to commercial plots.
7. The 15<sup>th</sup> Defendant in his Replying Affidavit deposes that the subdivision of the Syokimau Farm Ltd was completed before 1985 and when the new board took over in January 1985, its role was to ensure titles were handed over to the members. He confirms having purchased LR No. 13323/5 and a title deed was issued to him on May 22, 1989. He explains that offers for sale of commercial properties were made on November 24, 1988 vide Daily Nation and Taifa Leo Newspapers. He insists that the Plaintiff has not tendered evidence of any approved plan issued in 1988 or thereabout indicating that his property is public land.
8. The 27<sup>th</sup> defendant vide an affidavit sworn by F. M. Masika confirmed being the registered proprietor of LR No. 13323/16 which he bought from Syokimau Farm Ltd and has a Title Deed to that effect. He contends that he has been in possession thereof, denies his land is public land and insists the said land was never surrendered to government. He reiterates that the court has no jurisdiction to stay these proceedings pending outcome of matter before National Land Commission.
9. The 69<sup>th</sup> defendant through her replying affidavit confirms she purchased LR No. 13323/62 and a title deed was issued to that effect on October 17, 1989. She denies that her parcel of land is public land and reiterates some of the averments of the 1<sup>st</sup> defendant.
10. One Jennifer N. Kilonzo swore a replying affidavit on behalf of the 28<sup>th</sup>, 66<sup>th</sup> and 67<sup>th</sup> Defendants where she deposes that she is a beneficiary of the Estate of the late Harrison Kilonzo (deceased) who was a former member including director of Syokimau Farm Limited. She avers that the deceased was the registered owner of LR No. 13323/60. She provides the history of Syokimau Farm Limited. She explains how the government attempted to compulsorily acquire LR No. 7149/11/R being land under Syokimau Farm Limited but later ceded the whole land back to the said company vide Gazette Notice No. 1447 dated April 15, 1983. She insists LR No. 7149/11/R or LR No. 7149/11 is not public land. She reiterates that the Plaintiff was not a shareholder nor a member of Syokimau Farm Limited and hence neither a beneficiary of the lands given out by the said Syokimau Farm Limited.
11. The 89<sup>th</sup> defendant vide her Replying Affidavit confirms that subdivision of the Syokimau Farm Ltd was completed before 1985 and when the new board took over in January 1985, its role was to ensure titles were handed over to the members. She avers that she was a member of Syokimau Farm Limited having purchased several plots and offers for sale of commercial properties were made on November 24, 1988 vide Daily Nation and Taifa Leo Newspapers. She reiterates that the Director of Surveys, has equally approved the plans as submitted by the then board of Syokimau Farm Ltd. Further, that the plaintiff has not attached any resolution by the members designating the parcels held by the said defendant to be public land.



12. The 111<sup>th</sup> defendant in his replying affidavit contends that it is the bona fide purchaser of LR No. 13323/10 having acquired the same on September 9, 1991 from Syokimau Farm Limited. He avers that at the point of purchaser, there was no indication the suit land was public land. Further, his title has never been challenged. He insists from inception and original survey, the larger property was private land. He also reiterates that the plaintiff has filed a duplicity of suits in respect to the fulcrum of the dispute herein.
13. The 103<sup>rd</sup> defendant in his affidavit in opposition to the instant Application deposes that he is the registered lessee of LR No. 13323/102. Further, that he bought the land from Julius Muthoka Ndolo vide a transfer dated the 18<sup>th</sup> June, 2012 and have since developed it, after obtaining approvals from the County Government of Machakos. He avers that, he has dutifully paid land rates and rent. Further, that the plaintiff's averments are malicious.
14. One Daniel Musyoka Maithya, the Chairperson of the Syokimau Developers and Business Association in which the 1<sup>st</sup> to 120 Respondents are members, swore an affidavit representing them. He deposes that the plaintiff's Application is frivolous and an abuse of the court process. He explains that the 1<sup>st</sup> to 120<sup>th</sup> Respondents either purchased their respective parcels of land directly from Syokimau Farm Limited or individuals who had acquired their plots from the said company. He contends that, by the time the Respondents were acquiring their respective parcels of land, the said land was private property. Further, that the Respondents were issued with Leasehold Certificates in respect to their parcels of land, which titles have never been challenged. He argues that the Respondents have quietly been in possession of their land and the Plaintiff's claim is statute barred. Further, that the court lacks jurisdiction to hear this matter as it is pending determination at the National Land Commission and the plaintiff has also filed Machakos ELC No. 14 of 2020 including Machakos JR no. 14 of 2021, making this suit sub judice.
15. The 112<sup>th</sup> defendant in opposition to the instant Application filed a replying affidavit confirming he had authority of the 113<sup>th</sup> defendant to swear the said affidavit. He avers that subdivision of the Syokimau Farm Ltd was completed before 1985 and when the new board took over in January 1985, its role was to ensure titles were handed over to the members. He avers that he was a member of Syokimau Farm Limited having purchased several plots and offers for sale of commercial properties were made on November 24, 1988 vide Daily Nation and Taifa Leo Newspapers. Further, that title for parcel numbers 13323/111 and 13323/112 were issued on the September 13, 1993 and the user of the said parcels indicate they shall only be used for shops, office and/or flats (excluding sale of petrol or motor oils). He explains that parcel No. 13323/111 was transferred to Honam Holdings Ltd on December 13, 2019 and 13323/112 to Dreadnought Holdings Ltd on December 13, 2019. He reiterates that the Plaintiff has not tendered evidence of any approved plan issued in 1988 or thereabout indicating that properties they own are public land.
16. The 115<sup>th</sup> respondent vide an affidavit sworn by Paul Masila Kimeu stated that it is only 20 acres in LR No. 12715/267 which is a public utility plot. He disputed certain annexures especially JIW2 and claimed it is a fabrication. He contended that LR No. 12715/409 was not public land. Further, that LR No. 12715/207, 12715/189, 12715/255, 12715/256, 12715/414, 12715/447, 12715/700 and 12715/189 were allocated to shareholders.
17. The application was canvassed by way of written submissions.



## Analysis and Determination

18. Upon consideration of the instant Notice of Motion Application including the respective affidavits and rivaling submissions, the only issue for determination is whether the plaintiff is entitled to orders of temporary injunction pending the hearing and determination of this suit.
18. The plaintiff has sought for orders of injunction against the defendants seeking to restrain them from dealing with Land Reference Numbers: 12715/267, 12715/207, 12717, 12715/255, 12715/256, 12715/414, 12715/409, 12715/447, 12715/700 and 12715/189 or any resultant sub divisions thereof within Syokimau, Machakos County Mavoko Sub County pending the determination of the suit. As to whether the plaintiff has established a *prima facie* case with a probability of success at the trial, I will rely on the principles established in the case of *Giella v Cassman Brown & Company* [1973] EA 358 as well as the definition of a *prima facie* case as stated in the case of *Mrao Ltd v First American Bank of Kenya & 2 others* [2003] KLR 125. The Plaintiff claims that the aforementioned parcels of land including the resultant subdivisions therefrom are public land. The Defendants have disputed the fact that the aforementioned parcels of land are public land and most of them explained how they acquired their land and annexed copies of their respective titles. I have had a chance to peruse the documents presented by all the parties and I note the Plaintiff did not dispute the explanation that the subdivision of Syokimau Farm Ltd was completed before 1985, and when the new board took over in January 1985, its role was to ensure titles were handed over to the members. The Plaintiff did not deny that some of the Defendants were members of Syokimau Farm Limited. Further, that offers for sale of commercial properties were made on November 24, 1988 vide Daily Nation and Taifa Leo Newspapers. From the Plaintiff's Supporting Affidavit, it did not furnish court with any evidence of any approved plan of 1988 indicating the aforementioned plots were public land. It emerged that there were two other suits in existence being Machakos ELC JR No. 140 of 2021, ELC No. 14 of 2021 which relate to this matter. Further, that the government attempted to compulsorily acquire LR No. 7149/11/R being land under Syokimau Farm Limited but later ceded the whole land back to the said company vide gazette Notice No. 1447 dated April 15, 1983.
19. It is trite that injunctive reliefs suffice so as to protect the substratum of the suit. However, a party seeking injunctive relief must come to court with clean hands. In this instance, I note the plaintiff which is an association was not a member of Syokimau Farm Limited which initially owned the bigger parcel of land where the suit lands emanated from. The Plaintiff admits that the issue of whether the aforementioned parcels of land are public land or not is still pending before the National Land Commission. I note the defendants herein have respective titles to their land which emanated from Syokimau Farm Limited that was a private company. The Plaintiff has not explained why it took them long to lodge the suit against the respective Defendants out of whom some of them have developed their parcels of land. Based on the facts as presented while associating myself with the decisions I have cited, at this juncture, I find that the Plaintiff has not demonstrated a *prima facie* case as against the defendants to warrant the orders sought. In relying on the principles established in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, I need not proceed to deal with the other two limbs on injunctions.
19. It is against the foregoing that I find the plaintiff's Notice of Motion Application dated the October 19, 2021 unmerited and will disallow it. Costs will abide the outcome of this suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 31ST DAY OF OCTOBER, 2022**

**CHRISTINE OCHIENG**



**JUDGE**

