



**Kano Kajulu Farmes Co-operative Society Ltd v County Land Registrar, Kisumu & another  
(Environment & Land Case 46 of 2018) [2022] KEELC 14479 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14479 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 46 OF 2018  
A OMBWAYO, J  
OCTOBER 27, 2022**

**BETWEEN**

**KANO KAJULU FARMES CO-OPERATIVE SOCIETY LTD ..... PLAINTIFF**

**AND**

**COUNTY LAND REGISTRAR, KISUMU ..... 1<sup>ST</sup> DEFENDANT**

**MARY AKEYO OGENDO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Kano Kajulu Farmers' Co-operative Society Limited hereinafter referred to as the applicant have come to this court with an application dated January 24, 2022 praying for an order of injunction restraining the respondent, his servants, agents, heirs and assignees and/or any other persons acting on his behalf from interfering, selling, charging, disposing, subdividing, transferring and alienating or interfering with the said land parcel number Kisumu/Kochieng' /2836 measuring approximately 0.04Ha having been subdivided to Kisumu/Kochieng' /4906 and Kisumu/Kochieng' /4899 until the hearing and final determination of this suit.

The application is based on facts that:-

- a. By an agreement for sale of land dated April 18, 1997, the applicant bought the said land parcel number Kisumu/Kochieng' /2836 measuring approximately 0.04Ha having been subdivided to Kisumu/Kochieng' /4806 and Kisumu/Kochieng' /4899 from and paid in full purchase price to Onyango Oyoo aka Gabriel Onyango Oloo.
- b. The applicant immediately took possession of the parcel of land and has been in quite peaceful and open occupation and user of the said parcel of land adverse to him for a period over 44 years hence this adverse possession suit.



- c. That the applicant recently discovered that the 2<sup>nd</sup> respondent has caused the said parcel of land to be illegally transferred to her name yet she has not obtained grant of letter of administration intestate and therefore lacks the capacity to transfer the suit parcel. Further, this suit is pending hearing in court.
  - d. That the 2<sup>nd</sup> defendant has threatened to evict the applicant and has been locking the applicant's premises on the suit parcel therefore disrupting the Applicant's peaceful business operations.
  - e. That the actions of the 2<sup>nd</sup> respondent are bound to permanently deprive the applicant of his right to quiet possession and right to enjoyment of his land and occasion irreparable loss to the applicant that is not compensable by monetary award.
  - f. That the applicant has a *prima facie* case, which is already before this honorable court against the respondents with an overwhelming chance of success.
  - g. That this is a fit proper case to grant order of temporary injunction.
2. The application is supported by affidavit of Charles Ayub Owane that reiterates the grounds.
  3. In the replying affidavit of Mary Akeyo Ogendo she states that she is to registered owner of the parcel of land in dispute and indicated she has right to enter the property. She has all rights and privileges appurtenant thereto over any client including applicant.
  4. I have considered the application, affidavits and received the written submission and do find that the plaintiffs are in possession of the suit property whereas the 2<sup>nd</sup> defendant has title to the property. The plaintiff claim is based on adverse possession. Whether to grant of temporary injunction or not is a discretion of the court.
  5. The principles to be applied for grant of the orders of temporary injunction were made in *Giella -vs- Casman brown* 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 harm which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience”
  6. In Court in *Mrao Ltd Vs first American Bank of Kenya Ltd & 2 others* Civil appeal No. 39 of 2002 described *prima facie* case to be:-
 

.....in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there is exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal form the latter.
  7. I do find that the plaintiff have established a *prima facie* case with likelihood of success because they are in possession of the property. Moreover, if injunction is not granted the defendants are likely to move the property out of reach of the plaintiff and the court orders may be made in vain. The balance of convenience tilts towards grating temporary injunction as the plaintiff will be more inconvenienced if the defendant transfers the property to a 3<sup>rd</sup> party.
  8. I do grant a temporary order of injunction restraining the respondents, their servants, agents, heirs, and assignees and/or any other persons acting on their behalf from interfering, selling, charging,



disposing, subdividing, transferring and alienating or interfering with the same land parcel number Kisumu/Kochieng<sup>2</sup>/2836 measuring approximately 0.04Ha having been sub-divided to Kisumu/Kochieng<sup>2</sup>/4906 and Kisumu/Kochieng<sup>2</sup>/4899 until the hearing and final determination of this suit.  
That costs be in the cause

**DATED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF OCTOBER 2022.**

**A .O OMBWAYO**

**JUDGE**

