



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kipchillat v Kimutai & 4 others (Environment & Land Case  
E062 of 2021) [2022] KEELC 15201 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15201 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E062 OF 2021  
EO OBAGA, J  
NOVEMBER 24, 2022**

**BETWEEN**

**SILAS KIPTUI KIPCHILLAT ..... PLAINTIFF**

**AND**

**BETHWELL KIMUTAI ..... 1<sup>ST</sup> DEFENDANT**

**MOSES KIPLEI ..... 2<sup>ND</sup> DEFENDANT**

**JAPHET KIPKEMBOI MAGUT ..... 3<sup>RD</sup> DEFENDANT**

**COUNTY LAND REGISTRAR, UASIN GISHU COUNTY ..... 4<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of notice of motion dated December 23, 2021 in which the plaintiff/applicant seeks the following orders:-
  1. Spent
  2. Spent
  3. That an interlocutory injunction do issue restraining the 4<sup>th</sup> and 5<sup>th</sup> defendants from proceeding with the registration of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, whether by themselves, their agents/or representatives and/or agents as the proprietors of the leasehold interest over the parcel of land known as Eldoret Municipality Block 10/2006 and interfering with the plaintiff's user and occupation pending the hearing and determination of the suit.
  4. That the costs of this application be awarded to the plaintiff.



2. In the year 1998, the applicant saw a vacant plot at Eldoret. He applied for allocation of the property. He was granted a letter of allotment dated November 17, 1998 in respect of an unsurveyed plot. He later pursued survey of the plot which became known as LR Eldoret Municipality/Block 10/2006 (suit property).
3. The applicant paid for the suit property on July 31, 2012. In or around November, 2021, the applicant learned that the 1<sup>st</sup> to 3<sup>rd</sup> defendants'/respondents' had obtained certified true copies from survey office and were in the process of having a lease registered in their favour. This prompted the applicant to complain to the Lands Office in Uasin Gishu as well as the Lands office in Nairobi.
4. The applicant further learned that the 1<sup>st</sup> to 3<sup>rd</sup> defendant had obtained lease documents from Nairobi which they were about to have registered by the 4<sup>th</sup> and 5<sup>th</sup> defendants/respondents. This is what prompted the applicant to file the present application in which he seeks to restrain the 4<sup>th</sup> and 5<sup>th</sup> respondents from registering the suit property in favour of the 1<sup>st</sup> to 3<sup>rd</sup> respondents.
5. The 1<sup>st</sup> to 3<sup>rd</sup> respondents opposed the applicants application through grounds of opposition dated January 13, 2022 and a replying affidavit sworn on January 14, 2022. The 1<sup>st</sup> to 3<sup>rd</sup> respondents contend that the government departments cannot be enjoined from carrying out their lawful duties and that the suit property was lawfully allotted to them after which they paid and the process of registration of lease in their favour is going on.
6. The parties were directed to file written submissions in respect of the application. The applicant filed submissions on April 4, 2022. The 1<sup>st</sup> to 3<sup>rd</sup> respondents filed their submissions on March 22, 2022. Though the 4<sup>th</sup> to 6<sup>th</sup> defendants/respondents entered appearance, they neither filed grounds of opposition nor replying affidavit or submissions.
7. I have carefully gone through the applicant's application as well as the opposition to the same by 1<sup>st</sup> to 3<sup>rd</sup> respondents. I have also considered the submissions filed by the parties. The only issue for determination is whether the applicant has demonstrated that he has a prima facie case to warrant issuance of an injunction.
8. The principles for grant of an injunction were well stated in the case of *Giella v Cassman Brown & Co Limited (1973) EA 358*.

Firstly, an applicant has to establish that he has a prima facie with probability of success. Secondly, an injunction will not be granted unless the applicant will suffer injury which will not be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.

9. A *prima facie* case was defined in the case of *Mrao Ltd v First American Bank for Kenya & 2 Others (2003) eKLR* 125, the Court of Appeal stated as follows:-

“...in civil cases, a prima facie case is a case in 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. A *prima facie* case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case...”



10. The Court of Appeal adopted the definition of *prima facie* case in *Nguruman Limited v Jane Bonde Mielsen & 2 others (2014) eKLR* but added the following:-

“...we adopt that definition save to add the following conditions by way of explaining it. The party on whom the burden of proving a *prima facie* case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion...”

11. I have considered the materials placed before me. I notice that both the applicant and the 1<sup>st</sup> to 3<sup>rd</sup> respondents have allotment letters bearing the same date save that one is in respect of an unsurveyed plot and the other is in respect of a surveyed property. The two allotment letters were signed by the same person. The amounts in the two allotment letters are also different.
12. Both the applicant and the 1<sup>st</sup> to 3<sup>rd</sup> respondents have annexed a copy of a letter dated April 8, 2016 from the same surveyor. However, on going through other documents by the applicant, I find that the applicant has made out a *prima facie* case with probability of success. I therefore allow the applicant’s application in terms of prayers 3 and 4. The applicant shall proceed to deposit in court security for costs in the sum of Kshs 150,000/= within 30 days from today, failing which the injunction orders will lapse without any further recourse to court.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**E O OBAGA**

**JUDGE**

**In the virtual presence of;**

Mr Ngigi for 1<sup>st</sup> to 3<sup>rd</sup> Defendants/Respondents

Ms Odeyo for 4<sup>th</sup> to 6<sup>th</sup> Defendants

Court Assistant –Albert

