



REPUBLIC OF KENYA



KENYA LAW
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**Mwangangi v Onyambu & 10 others (Environment & Land Case
202 of 2018) [2022] KEELC 14997 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14997 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 202 OF 2018
A NYUKURI, J
NOVEMBER 23, 2022**

BETWEEN

JOHN MUSYOKI MWANGANGI PLAINTIFF

AND

PAMEAL BWARI ONYAMBU 1ST DEFENDANT

KIPRUTO KANDIE 2ND DEFENDANT

DANIEL KIANGA MUTHUI 3RD DEFENDANT

FLORENCE MAUNCHO 4TH DEFENDANT

CHRISTINE MORARA MAISHA 5TH DEFENDANT

TOBIAS OKOTH OTIENO 6TH DEFENDANT

LINUS MORURI NYAMOKO 7TH DEFENDANT

CHIEF LAND REGISTRAR 8TH DEFENDANT

COUNTY GOVERNMENT OF MACHAKOS 9TH DEFENDANT

ATTORNEY GENERAL OF THE REPUBLIC OF KENYA 10TH DEFENDANT

DIRECTOR OF SURVEYS OF THE REPUBLIC OF KENYA .. 11TH DEFENDANT

RULING

1. Before court is the application amended on June 17, 2019 and dated October 18, 2018, where the Plaintiff sought the following orders;
 - a. Spent
 - b. Spent



- c. Spent
 - d. Spent
 - e. Spent
 - f. That this Honourable Court be pleased to restrain by way of a temporary injunction the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th Defendants/Respondents by themselves, their agents, servants or whomsoever acting on their behalf from entering, trespassing, developing, transferring, disposing or dealing in any other way with the parcel of land known as LR No 2358/9(Grant No IR 90885) situated in North East of Mavoko Municipality, in Machakos District containing by measurement seven decimal seven two seven(7.727) hectares pending hearing and determination of the suit herein.
 - g. That this Honourable Court be pleased to issue an inhibition order directed at the 8th Defendant/Respondent inhibiting the registration of any dealing and/or dispositions with the parcels of land listed under prayer 4 above pending hearing and determination of the suit herein.
 - h. That this Honourable Court be pleased to order the 8th Defendant/Respondent to avail to the Plaintiff/Applicant certified copies of the search results reflecting the current status of the parcel of land known as LR No 2358/9/ (Grant No IR 90885) situated in North East of Mavoko Municipality, in Machakos District containing by measurement seven decimal seven two seven (7.727) hectares forthwith.
 - i. That this Honourable Court be pleased to order the 8th Defendant/Respondent to avail to the Plaintiff/Applicant certified copies of the land records in its possession of the parcel of land known as LR No 2358/9(IR No 177873) situated in North East of Athi River, in Machakos District containing by measurement seven decimal seven two seven (7.727) hectares as delineated on Land Survey Number 234457 and the resulting sub-divisions and/or transfers thereof forthwith.
 - j. That this Honourable Court be pleased to order the 9th Defendant/respondent to avail to the Plaintiff/Applicant certified copies of land records in its possession reflecting the current status of the parcel of land known as LR No 2358/9(Grant No IR 90885) situated in North East of Mavoko Municipality, in Machakos District containing by measurement seven decimal seven two seven (7.727) hectares forthwith.
 - k. That this Honourable Court be pleased to order the 9th Defendant/Respondent to avail to the Plaintiff/Applicant certified copies of land records in its possession of the parcel of land known as LR No No 2358/9 (IR No 177873) situated in North East of Athi River, in Machakos District containing by measurement seven decimal seven two seven (7.727) hectares as delineated on Land Survey Number 234457 and the resulting sub-divisions and/or transfers thereof forthwith.
2. The application is premised on the affidavit of John Musyoka Mwangangi the Plaintiff herein sworn on 1 June 7, 2019. The Applicant's case is that he is the registered proprietor of LR No 2358/9(Grant No LR 90885) situated in North East of Mavoko Municipality Machakos District, and measuring 7.72 Ha.(suit property). Further, that the 1st to 7th Defendants have encroached and started committing wanton acts of waste on the suit property and that if an injunction is not granted, the Plaintiff stands to suffer irreparable injury.



3. The Applicant also averred that on June 25, 2018, he sought for an official search of the suit property from the 8th Respondent but none has been forthcoming. According to the Applicant, the records provided to the Applicant by the 9th Defendant in respect of the suit property have glaring errors and that information sought from the 8th and 9th Defendants is necessary for enforcement of the Plaintiff's constitutional rights. He stated that he instructed Gappy Consultants Licenced Land Surveyors to inter alia determine the geographical location of the suit property and ownership details thereof. Further, that the report by the said Surveyors showed that the suit property had a duplicate title and that the same had been subdivided into 24 sub plots under survey number F/R No 439/76 and that some sub plots had already been transferred to the 4th, 5th, 6th and 7th Defendants.
4. According to the Applicant, the duplicate title is fraudulent and the subdivisions thereof are meant to cover up the fraud and defeat the Plaintiff's proprietary rights. The Applicant's position is that if an inhibition order is not granted the Plaintiff will suffer irreparable injury.
5. The application was opposed. Pamela Burari Onyambu the 1st Defendant filed a replying affidavit dated June 18, 2019. She stated that the prayers sought by the Plaintiffs were meant to misguide the court so that the Plaintiff is assisted in unjustly enriching himself at the 1st Defendant's expense. Her view was that the Plaintiff had come to court with unclean hands.
6. The 1st Defendant maintained that there was no evidence to show that she acquired the suit property fraudulently. She pointed out that the Plaintiff's claim was based on contradictions as the dates on the allotment and title deed fell on weekends when government officials are normally not on duty, that hence it is the Plaintiff whose documents were forged. She stated that the Plaintiff was not in the country at the time of filling suit and that therefore the Plaintiff has approached the court with unclean hands.
7. Although parties were directed to file submissions in respect of their application none complied.

Analysis and Determination

8. I have considered the application, the supporting affidavit and the replying affidavit. The issue that arise for determination is whether the Applicant has met the threshold for grant of orders of injunction and inhibition pending the determination of the suit.
9. Principles for grant of injunction are well settled. The Applicant must demonstrate three conditions; namely;
 - a. Demonstrate a prima facie case with chances of success;
 - b. Demonstrate that if the injunction is not granted he stands to suffer irreparable injury that may not be compensated in damages.
 - c. If the court is in doubt, it will decide the application on a balance of convenience.
10. In the case of *Nguruman Limited versus- Jan Bonde Nielson & 2 others CA No 77 of 2012(2014) eKLR*, the Court of Appeal held as follows;

In an interlocutory application, the Applicant has to satisfy the triple requirements to;

 - a. Establish his case only at a prima facie level,
 - b. Demonstrates irreparable injury if a temporary injunction is not granted and
 - c. Allay any doubts as to (b), by showing that the balance of convenience is in his favour.



These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate, distinct and logical hurdles which the Applicant is expected to surmount sequentially.

11. A prima facie case was described in the case of *Mrao Ltd vs First American Bank of Kenya Ltd (2003) eKLR* as follows;

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 exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.

12. In the instant application, the Plaintiff/Applicant stated that he is the registered proprietor of the suit property and that the Defendants had unlawfully been registered as owners of the plots arising from subdivisions of the suit property, which subdivision was fraudulently done on account of a duplicate title. The Plaintiff annexed a copy of the letter of allotment dated February 20, 1999, and a title dated December 23, 2001 for a lease hold for 99 years with effect from March 1, 1999.

13. Section 26 of the *Land Registration Act* No 3 of 2012 vests absolute ownership rights in a registered proprietor of land, and states as follows;

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except;-

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party's or
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

14. It is therefore clear that a certificate of title is prima facie evidence of protectable proprietary rights by the registered owner. In this matter the Plaintiff has demonstrated at a prima facie level that he has proprietary rights over the suit property. In my view that is sufficient demonstration that he has a prima facie case with chances of success.

15. On whether the Plaintiff stands to suffer irreparable injury that cannot be compensated in damages, the Plaintiff deponed that the Defendants had trespassed on the suit property, erected a fence and placed beacons thereon. He attached photographs showing that there were fencing posts and fencing barbed wire on the suit property.

16. As the Plaintiff has shown that the Defendants have trespassed on the suit property and began developing the same, it is clear that if an injunction is not granted he stands to suffer irreparable injury that may not be compensated in damages.

17. On the issue of the balance of convenience, the Applicant has stated that he is in possession of the suit property. That assertion has not been denied by the Respondents. Therefore the balance of convenience tilts in favour of the grant of injunction.

18. The Plaintiff has also sought for an order of inhibition to inhibit the registration of any dealings in respect of the suit property. Section 68 provides for the power of the court to inhibit registered dealings as follows;



1. The court may make an order (herein after referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or change.
19. Section 69 of the [Land Registration Act](#) No 3 of 2012 provides the effect of inhibition as follows;
So long as an inhibition remains registered, any instrumental that is inconsistent with the inhibition shall not be registered.
20. It is therefore, clear that the purpose of an inhibition is to maintain the status obtaining on a particular property so that no new rights or interests are registered in respect thereto for a specified time or until the occurrence of an event.
21. The Applicant herein states that the Defendants obtained registration of the suit property from a duplicate title fraudulently and based on subdivisions done fraudulently. The Applicant is apprehensive that the Defendants may dispose of the suit property. In my considered view, an order of inhibition is justified where there is a likelihood that the status of the property may be altered to the detriment of one of the parties to a suit.
22. I am therefore, satisfied that an order of inhibition is necessary in the circumstances of this case to preserve the suit property in the interests of justice and both parties, as both claim ownership and allege fraud against each other.
23. On whether the Land Registrar should issue the Plaintiff with searches in respect of the suit property, the Plaintiff has stated that he made a request which was not honored. The Land Registrar is under obligation to issue search certificates to persons interested in establishing the status of any property as provided for under Section 34 of the [Land Registration Act](#) No 3 of 2012. The Land Registrar did not file any response to give reasons why he failed to issue the requested searches. I therefore, find that the Plaintiff is entitled to be furnished with official searches of the suit property upon payment of the requisite fees.
24. On whether the 9th Defendant should be ordered to provide documents sought by the Plaintiff, I note that the 9th Defendant was originally named as Mavoko Sub County registry. The amended Notice of Motion purported to remove 'Mavoko Sub County registry and in its place indicated the County Government of Machakos as the 9th Defendant. The latter has never been a party to these proceedings and they cannot be sneaked in these proceedings through an amended Notice of Motion without first being made a party to the suit. They have not been served with summons to enter appearance and are therefore strangers to these proceedings. The manner in which they have been introduced in these proceedings is unknown in law. Therefore the prayer against them is incompetent and the same is struck out.
25. In the end, I find and hold that the application dated October 18, 2018, and amended on June 17, 2019, is partially merited and I make the following orders;
 - a. That this Honourable Court be and is hereby pleased to restrain by way of a temporary injunction the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th Defendants/Respondents by themselves, their agents, servants or whomsoever acting on their behalf from entering, trespassing, developing, transferring, disposing or dealing in any other way with the parcel of land known as LR No 2358/9 (Grant No IR 90885) situated in North East of Mavoko Municipality, in Machakos District containing by measurement seven decimal seven two seven (7.727) hectares pending hearing and determination of the suit herein.



- b. That this Honourable Court be and is hereby pleased to issue an inhibition order directed at the 8th Defendant/Respondent inhibiting the registration of any dealing and/or dispositions with the parcels of land listed under prayer 4 above pending hearing and determination of the suit herein.
- c. That this Honourable Court be and is hereby pleased to order the 8th Defendant/Respondent to avail to the Plaintiff/Applicant certified copies of the search results reflecting the current status of the parcel of land known as LR No 2358/9/ (Grant No IR 90885) situated in North East of Mavoko Municipality, in Machakos District containing by measurement seven decimal seven two seven (7.727) hectares forthwith.
- d. That this Honourable Court be and is hereby pleased to order the 8th Defendant/Respondent to avail to the Plaintiff/Applicant certified copies of the land records in its possession of the parcel of land known as LR No 2358/9(IR No 177873) situated in North East of Athi River, in Machakos District containing by measurement seven decimal seven two seven (7.727) hectares as delineated on Land Survey Number 234457 and the resulting sub-divisions and/or transfers thereof forthwith.
- e. That the Officer Commanding Station (OCS) KBC/Matungulu Police Station to ensure compliance with the temporary injunction orders herein.
- f. Costs of the application are awarded to the Plaintiff/Applicant.

26. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 23RD DAY OF NOVEMBER, 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Ms. Kui for the Plaintiff.

Mr. Liko for the 2nd-7th Defendants.

No appearance for the other Defendants

Court Assistant - Josephine

