



**Endonyo Kete Kutu Group Ranch v Ololmaintanya & 428 others; Kamongo Farmers Cooperative Society & another (Interested Parties) (Environment & Land Case 245 of 2017) [2022] KEELC 15417 (KLR) (21 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15417 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE 245 OF 2017  
CG MBOGO, J  
DECEMBER 21, 2022**

**BETWEEN**

**ENDONYO KETE KUTU GROUP RANCH ..... PLAINTIFF**

**AND**

**MURI KEVIN OLOLMANTANYA & 428 OTHERS ..... DEFENDANT**

**AND**

**KAMONGO FARMERS COOPERATIVE SOCIETY ..... INTERESTED PARTY**

**CHAMOON KONINI OLE MAPELU ..... INTERESTED PARTY**

**RULING**

1. Before this court for determination is a notice of motion application dated July 19, 2022 and expressed to be brought under section 1,1A and 3A of the *Civil Procedure Act*, order 40 rule 1 of the *Civil Procedure Rules* and section 68 of the *Land Registration Act* seeking the following orders: -
  1. That the honourable court be pleased to issue a temporary order of injunction restraining the plaintiff whether by themselves, their servants, agents or any person whomsoever acting on their behalf from subdividing, transferring, alienating or in any manner whatsoever dealing with Land Parcel No. Cis Mara/Ololunga/132 pending the hearing and determination of this suit.
  2. That the honourable court be pleased to issue a permanent order of injunction restraining the plaintiff whether by themselves, their servants, agents or any person whomsoever acting on their behalf from subdividing, transferring, alienating or in any manner whatsoever dealing with Land Parcel No. Cis Mara/Ololunga/132 pending the hearing and determination of this suit.



3. That the honourable court do issue an order of inhibition restraining any dealings whatsoever with Land Parcel No. Cis Mara/Ololunga/132 until this suit is heard and determined.
4. That the costs of this application.
2. The application is premised on the grounds on the face of it and more particularly as set out in the affidavit of the applicant.
3. The application is supported by the affidavit of Joseph Kariuki Karanja, Chairperson of the applicant sworn on even date. In his affidavit, the applicant deposed that it is the registered owner of land known as L.R. No. Cis Mara/Ololunga 3811 which it bought from the respondent in the year 1984 and which was subdivided from the suit property Narok/Cis-Mara/Olololunga/132 which was subdivided into LR Narok/Cis-Mara/Olololunga/2663 and 2662. Further, that parcel no. LR. Narok/Cis-Mara/Olololunga 2663 was later subdivided into 5 portions.
4. The applicant further deposed that on 5<sup>th</sup> July 1996, the applicant obtained a title to Cis-Mara/Olololunga/ 3811. Thereafter, the plaintiff instituted this suit in Nakuru HCC 318 of 2011 which was later transferred to this court and it obtained orders restraining any dealings on the properties that are subject of this suit including the applicant's property. The applicant further deposed that despite the suit land having been closed in the year 1995 for sub-division, the respondent has applied for re-issuance of the title deed vide letters dated 3<sup>rd</sup> August, 2021 and 16<sup>th</sup> November, 2018 seeking permission to subdivide the property. Further, that vide a letter dated 8<sup>th</sup> March, 2021, the National Land Commission granted the respondent the authority to subdivide the suit property amongst its members and in order to facilitate the subdivision, the sub county land adjudication and settlement officer Narok South/West wrote to the Land Registrar Narok North/East and Narok South/West advising to reissue the title deed.
5. The applicant further deposed that vide a notice dated 16<sup>th</sup> December, 2021, the Land Registrar issued a 30-day notice to the effect that he intends to revoke all the subdivisions on the suit property and restore the original title to the respondent herein and in doing so the respondent has engaged the services of a surveyor who is in the process of re subdividing the suit property. Further that being wary of the said activities the applicant caused a caution to be registered on the suit property on June 28, 2022.
6. The applicant deposed that the re-issuance and the subdivision of the suit property will greatly affect the interest of members of the applicant who are not members of the plaintiff despite the pendency of this suit and the existence of a court order inhibiting dealings on the parcels land that were as a result of the subdivision of the suit property. As such, the applicant deposed that it is only fair that the application is allowed.
7. The application was opposed by the replying affidavit of Nananai Ole Leperes, the chairperson of the respondent sworn on November 9, 2022. The respondent deposed that no wrangles or dispute has been brought disputing his election as the chairperson of the respondent and the applicant lacks locus standi to raise such a claim on behalf of the applicant as he is not a member of the respondent. The respondent further deposed that the administration police line alluded to was constructed by the community for security purposes and that the applicant does not have any of its members residing on the suit property and therefore cannot claim ownership.
8. The respondent further deposed that the applicant's lease expired on January 14, 2017 and the same was not extended and further that the applicant stopped cultivating the land three years ago. Further, that the applicant herein does not dispute the existence of the lease agreement but merely makes a



blanket statement denying claims. The respondent deposed that the lease agreement was duly signed by the leaders of the plaintiff and the then chairman of the applicant.

9. In conclusion, the respondent deposed that the applicant has no proprietary interest in the suit property as their titles were already revoked by the Land Registrar after issuance of the gazette notice and upon notice of expiry of the 30- days period. Also, that the applicant did not raise any objection and cannot therefore claim that they hold a valid title deed to a non-existent parcel of land.
10. The applicant did not file written submissions whereas the respondent opted to rely entirely on its replying affidavit. Be that as it may, I have carefully considered the application and the replying affidavit and the issue for determination is whether the applicant herein is entitled to the orders of injunction.
11. In order for a party to succeed in an application for a temporary injunction, he/she has to pass the test that was set out in the case of *Giella -vs- Cassman Brown* [1973] EA 358 which are:
  - (a) Whether the applicant has established a prima facie case
  - (b) Whether the he or she would suffer irreparable loss that may not be compensated by damages and
  - (c) That if the court is in doubt, it may rule on a balance of convenience.
12. The test for granting of an interlocutory injunction was considered in the *American Cyanamid Co. v Ethicom Limited* (1975) where three elements were noted to be of great importance namely: -
  - i. There must be a serious/fair issue to be tried,
  - ii. Damages are not an adequate remedy,
  - iii. The balance of convenience lies in favour of granting or refusing the application.
13. The important consideration before granting a temporary injunction under order 40 Rule 1 of the Civil Procedure Rules is the proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property, the court is in such a situation enjoined to grant a temporary injunction to restrain such acts. In the instant case, there is no doubt that the suit property is in danger of being alienated as the respondent has set in motion the process of re-issuance of the title deed for subdivision amongst its members. The respondent however contends that the applicant has no proprietary interest over the suit property as the lease is expired.
14. The question which therefore arises is whether the application meets the threshold set for the granting of orders of temporary injunction. In *Mrao Ltd versus First American Bank of Kenya and 2 others*, (2003) KLR 125 the court defined a prima facie case as: -

“A Prima facie case in a civil application includes but 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 later”.
15. A perusal of the documents relied on by the applicant shows that the title to the suit property was opened on July 10, 1980 and closed for subdivision on May 12, 1995 to pave way for subdivision of new numbers namely 2662 and 2663. It is the said parcel number 2663 that gave rise to parcel number 3811 upon subdivision of the same and a title deed was issued on the title on 5<sup>th</sup> July, 1996. Based on the history of the suit property as outlined above, it can be discerned that the applicant herein has an



identifiable interest in the suit property with the outcome being felt on it. As such, I am satisfied that the applicant has established a prima facie case.

16. On whether the applicant will suffer irreparable harm, I place reliance on the case of *Pius Kipchirchir Kogo Vs Frank Kimeli Tenai* (2018) eKLR which stated as follows: -

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

17. The applicant deposed that the re-issuance and re-subdivision of the suit property will cause irreparable loss as it will greatly affect the interest of the applicant who are not members of the respondent. In my humble view, the action of the respondent through its application to subject the suit property to a fresh subdivision will cause harm on not only the applicant but also to the innocent purchasers if there are any. I am agreeable that such loss cannot be compensated by way of damages.

18. On a balance of convenience, I rely on the case of Amir *Suleiman versus Amboseli Resort Limited* [2004] eKLR where the learned judge offered further elaboration on what is meant by “balance of convenience” and stated: -

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

19. I am of the view that there would be a lower risk in granting the said orders since the adjudication process is yet to kick off if at all and also there is need for the interest of justice to be met, that the suit be subjected to full trial.

20. Arising from the above, I find that the notice of motion application dated July 19, 2022 has merit and the same is allowed in terms of prayers 1 and 3 respectively. Costs to be in the cause. It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL on this 21<sup>ST</sup> day of DECEMBER, 2022.**

**HON. MBOGO C.G.**

**JUDGE**

**21/12/2022.**

**In the presence of:**

CA:Chuma

