



**Opondo v Mohamed & 2 others (Environment & Land Case  
E188 of 2022) [2022] KEELC 15618 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15618 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E188 OF 2022  
LN MBUGUA, J  
DECEMBER 8, 2022**

**BETWEEN**

**CHRISPINE OMONDI OPONDO ..... PLAINTIFF**

**AND**

**MOHAMED BILLE MOHAMED ..... 1<sup>ST</sup> DEFENDANT**

**ANNE WAVINYA MBITHE ..... 2<sup>ND</sup> DEFENDANT**

**KIAMBU DANDORA FARMERS COMPANY LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before me is a notice of motion application dated 25/5/2022 where the plaintiff seeks orders of injunction restraining the 1st defendant from continuing to construct trespass, encroach, or further alienating the suit property the same thing Nairobi block 157/ 1895 until the suit is heard and determined, and that the OCS Kayole Police Station or the DCIO to ensure that there is compliance with the said orders. The application is premised on the grounds on the face of it and on the Supporting Affidavit of the plaintiff.
2. The applicant contends that he bought the suit land from the 1<sup>st</sup> allottee one Reagan Mwangangi on 1.9.2011 of which Reagan had been allotted the suit land by the 3<sup>rd</sup> defendant on 23.12.2007. The applicant contends that the transfer of the land was duly effected in his favour after being issued with completion documents. Thus the processing of his certificate of lease commenced.
3. The applicant came to learn that someone had trespassed on the suit land and he duly reported the matter to the DCIO Kayole Police Station of which the investigations commenced. He learnt that his land was fraudulently transferred by the 2<sup>nd</sup> defendant to 1<sup>st</sup> defendant and he fears that the latter might dispose off the said land to unsuspecting buyers.



4. The 1<sup>st</sup> defendant has opposed the application via his Replying Affidavit dated 5.7.2022. He contends that he purchased the suit land from the 2<sup>nd</sup> defendant and that the latter was in actual possession and was also the registered proprietor of the suit land at the time of purchase. The 1<sup>st</sup> defendant contends that he has been in possession of that land since 30.8.2018 when he bought the land, that he is the one who has been paying the land rates, and that in December 2021 he began construction on the suit property.
5. He is aware that the 2<sup>nd</sup> defendant was in a romantic relationship with the plaintiff and that the two had purchased the suit property in 2011 from Reagan Mwangangi. He is also aware that the two separated. He further avers that the applicant has never taken possession of the suit property.
6. The 2<sup>nd</sup> defendant opposed the application vide her replying affidavit dated 23.6.2022. She contends that she was in a relationship with the plaintiff whereby they lived together in year 2010, but they separated in year 2013. She admits that the plaintiff bought the property from Reagan Mwangangi, but plaintiff later sold that land to her as per the agreement mentioned in paragraph six of her affidavit. She contends that later the original allottee transferred the land to her on 21.6.2018 and she then sold the land to the 1<sup>st</sup> defendant, with the transfer being effected to him on 10.11.2020. The 2<sup>nd</sup> defendant therefore claims that the 1<sup>st</sup> defendant has a good title. She denies having obtained documents of the suit property fraudulently. She also contends that the claim of the plaintiff is fake.
7. I have considered all the issues raised herein including all the submissions of the parties. To grant or not to grant the injunctive orders sought by the plaintiff is the issue falling for determination. The conditions for consideration in granting an injunction were set out in *Giella vs Cassman Brown & Company Limited* (1973) EA 358; That an applicant must establish a prima facie case with likelihood of success. The applicant must also establish that he would suffer irreparable damage that will not likely be compensated by an award of damages. If the court shall be in doubt, it shall determine the case on a balance of convenience.
8. It is not disputed by both the plaintiff and the 2<sup>nd</sup> defendant that the plaintiff is the one who originally bought the property from one Reagan Mwangangi. The crux of the dispute is whether the plaintiff ever sold this land to the 2<sup>nd</sup> defendant as alleged by the 2<sup>nd</sup> defendant and whether Reagan transferred the land to the plaintiff or to the 2<sup>nd</sup> defendant. These are conflicting issues of facts and ought to form the basis of issues for determination at the trial. The court cannot at this interlocutory stage deal with claims of ownership of the land.
9. I therefore find that the concern of the court at this interlocutory stage is to preserve the land. The law has developed in this area as was held in the case of *Jan Bolden Nielsen vs. Herman Phillipus Steya Also Known as Hermannus Phillipus Steyn & 2 Others* (2012) eKLR where Mabeya J stated as follows:-

‘I believe that in dealing with an application for an interlocutory injunction, the court is not necessarily bound to the three principles set out in the *Giella vs Cassman Brown* case. The court may look at the circumstances of the case generally and the overriding objective of the law.....

For the law as always kept growing to greater levels of refinement, as it expands to cover new situations not exactly foreseen before. ....

Even as those must remain the basis tests, it is worth adopting a further, albeit rather special and more intrinsic test which is now in the nature of general principle. The Court in responding to prayers for interlocutory injunctive relief, should always opt for the lower rather than the higher risk of injustice.....”



10. From the material presented before me, I find no evidence to indicate that the plaintiff and or the 2<sup>nd</sup> defendant had ever taken possession or were utilizing the suit property. I also discern that the 1<sup>st</sup> defendant is the one in possession of the suit land whereby he is putting up a building on that land. Nevertheless, the building is fresh at the stage of construction of a 1st floor. Since the question of ownership will be the subject of context at the trial, then no party should be allowed to have leverage over the other before the final determination. In that regard, the 1<sup>st</sup> defendant should not continue with any further construction.
11. In the final analysis, I find that the application dated 25.5.2022 partially succeeds and the same is allowed in the following terms:
  1. The 1<sup>st</sup> defendant shall remain in charge of the suit property but he shall not carry out any further construction on that land.
  2. The suit land shall not be alienated.
  3. The costs of the application shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF DECEMBER, 2022  
THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

M/s Awandu holding brief for Were for 3<sup>rd</sup> Defendant- Respondent

Obanyo for 2<sup>nd</sup> Defendant

Muhamud for 1<sup>st</sup> Defendant

Kibathi for Plaintiff

Court Assistant: Eddel/Vanilla

