



Sheobo v Harshiv Autospares Hardware & Suppliers Limited & another (Environment & Land Case E192 of 2022) [2022] KEELC 15629 (KLR) (8 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15629 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E192 OF 2022
LN MBUGUA, J
DECEMBER 8, 2022**

BETWEEN

BADI ALI SHEOBO APPLICANT

AND

**HARSHIV AUTOSPARES HARDWARE & SUPPLIERS LIMITED 1ST
DEFENDANT**

NAIROBI METROPOLITAN SERVICES 2ND DEFENDANT

RULING

1. This suit was filed contemporaneously with an application dated May 31, 2022 where the plaintiff is seeking injunctive orders against the defendants. On July 19, 2022, the court gave directions on the prosecution of the said application and a mention date was then given for September 28, 2022. On September 28, 2022, it came to light that the 1st defendant had also filed an application dated August 19, 2022 seeking orders to join other parties. The court gave direction to have the two applications prosecuted separately.
2. The matter was rescheduled for December 8, 2022 for delivery of the ruling on the application dated May 31, 2022 and for mention on the application of August 19, 2022. I have now gone through the application of August 19, 2022 and I discern that parties were given timelines of filing various documents including submissions. In that regard the court will proceed to deliver a ruling in respect of both applications.

Application dated 31.5.2022

3. The plaintiff is seeking orders of injunction restraining the defendants from interfering with the suit property LR No 209/14478 until the suit is heard and determined and that the OCS Langata Police Station to assist in compliance with the said order.



4. The application is premised on the grounds set out on the face of the application and on the Supporting Affidavit of the plaintiff. He avers that he is the registered owner of the suit premises. However, in February 2022, the 1st defendant encroached upon the suit premises and commenced the development of what appears to be a recreation park. The 1st defendant apparently stated that they had authority from the 2nd defendant to carry out the works.
5. The 1st defendant opposed the application vide the Replying Affidavit of one Harji Kerai dated August 19, 2022, indicating that he had authority to swear the said affidavit. He depones that parcel LR 209/14478 is among other properties located at the frontage of Shree Swaminarayan Temple which is a transport corridor set aside by the Kenya National Highway Authority for the development of Nairobi Southern Bypass Road.
6. He further avers that they had authorization from the 2nd Respondent to carry out beautification project along the Southern Bypass Road at the frontage of the temple, in order to improve the aesthetic value of the area. That initially, authorization was done using the wrong references but this position was rectified.
7. The 2nd Respondent was represented in court on July 19, 2022 and they were directed to file their response by August 2, 2022. However, they did not file any documents.
8. I have dully considered all the arguments raised herein including the submissions of the applicant as no other submissions have been filed. To grant or not to grant the injunctive orders is the question falling for determination.
9. Order 40 Rule 1 and 2 of the *Civil Procedure Rules*, 2010 provides that a Court may grant a temporary injunction or such order for the purpose of staying and preventing the wasting damaging... or disposition of the property as the court deems fit. The issue on grant of temporary injunctions was settled in the case of *Giella v Cassman Brown* (1973) EA and reiterated in several case laws including *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR; whereby courts held that the applicants must satisfy that they have a prima facie case with a probability of success. Secondly, an interlocutory order will not be granted unless it is demonstrated that the applicant might suffer irreparable injury which would not be adequately compensated by an award of damages. Lastly, if the court is in doubt on the above two requirements, it will decide the application based on the balance of convenience.
10. In *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] Eklr, the court held that;

“An injunction is an equitable remedy, meaning the court hearing the application has discretion in making a decision on whether or not to grant the application. The court will consider if it is fair and equitable to grant the injunction, taking all the relevant facts into consideration.” .
11. I find that the claim of the plaintiff is based on the registration of the suit property in his name. To this end, he has availed a certificate of lease running from July 1, 1999. He has been paying rates for the suit premises too.
12. On the other hand the 1st defendant is not staking a claim of ownership upon the land. They are pegging their claim of beautifying the place based on permission obtained from the 2nd defendant. Thus on the face of it, the claim of a registered owner is superior to one who only has a permit.



13. Secondly, I have gone through the photographs availed by the plaintiff and I discern that some developments were being commenced at the site. One of the photos depicts a recreation slide ordinarily used by children for leisure activities. This gives credence to the averments made by the plaintiff that what was being put up was a recreation park and not a beautification exercise.
14. Thirdly, I find that there seems to be a discrepancy on the parcel which 1st defendant was required to work on. The application made by 1st defendant to 2nd defendant to beautify the area dated February 7, 2022 was for the plot 209/1504. The letter from the 2nd Respondent dated February 10, 2022 made reference to parcel 209/1504, but a subsequent letter of March 24, 2022 gave authority for parcels 209/14478 and 209/1504.
15. At this stage, this court is not dealing with conflicted issues or facts; Whether the land is on a road or not is an issue that 1st defendant will have a chance to canvass at the trial. As at now, I find that the applicant is the one who has established a legal right over the suit property. I proceed to allow the application dated May 31, 2022 in terms of prayer No 4 only. The costs there of shall be in the cause.

Application dated 19.8.2022

16. The 1st defendant is seeking the following orders in the above application.
 - a. That the 1st Defendant / Applicant be granted leave to join the Kenya National Highways Authority, the Chief Registrar of the Ministry of Lands and the National Land Commission as the 1st, 2nd and 3rd Interested Parties respectively.
 - b. That the Directorate of Criminal Investigations to produce the report of their investigations in relation to the complaint made by the Respondent regarding LR No 209/14478 within 14 days pending the filing of the Applicant's defence in the main suit.
 - c. That leave be granted to the Applicant to file and serve his defence after the hearing and determination of this Application.
 - d. That the costs of this application be provided for.
17. The application is supported by the grounds on the face of the application and on the Supporting Affidavit of Harji Kerai Premji, who avers that parcel LR 209/14478 is situated on a transport corridor hence the need to join the three Interested Parties. He further avers that the matter was investigated by the police (Director of Criminal Investigations) hence their report is necessary.
18. On September 28, 2022, the court gave directions for the Respondents in the said application to file and serve their responses by October 12, 2022. I did not find any in the CTS.
19. The claim made by the 1st defendant that the suit land is on a transport corridor invites arguments touching on a question as to whether the suit land is on public land. In that regard the proposed parties are necessary parties to shed light on the claim of the 1st defendant.
20. For prayer no 2 in the aforementioned application, I find that the 1st defendant has not demonstrated that they requested for the relevant information and the same was denied as provided under Article 35 of the *Constitution*. Thus the said prayer No 2 is uncalled for and premature at this stage of the trial. In any event, the parties will have an opportunity to request for summons to any witness they desire to call at the pretrial stage.
21. In the circumstances, the application dated August 19, 2022 is allowed in terms of prayer No (1) and 3. The costs thereof shall be in the cause.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF DECEMBER, 2022
THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Onyony for 1st Respondent

Court assistant: Eddel/Vanilla

