



Ethics and Anti-Corruption Commission v Dhanjal & 2 others; Kenya Railways Corporation (Interested Party) (Environment & Land Case E020 of 2022) [2025] KEELC 83 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEELC 83 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E020 OF 2022
SO OKONG'O, J
JANUARY 23, 2025**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

HARJOT SINGH DHANJAL (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SATWANT SINGH DHANJAL 1ST DEFENDANT

CHERAMBA ENTERPRISE LIMITED 2ND DEFENDANT

WILSON GACHANJA 3RD DEFENDANT

AND

KENYA RAILWAYS CORPORATION INTERESTED PARTY

RULING

1. The full facts of this case are set out in the judgment delivered by this court on 4th July 2024. The Plaintiff brought this suit under the provisions of Section 11(1)(j) of the *Ethics and Anti-Corruption Commission Act*, 2011, the *Anti-Corruption and Economic Crimes Act*, 2003 and other enabling provisions of the law for the recovery of all that parcel of land known as Kisumu Municipality/Block 7/446 a public property initially acquired and registered in the name of the Interested Party, Kenya Railways Corporation (hereinafter referred to only as “the Interested Party”).
2. The Plaintiff averred that Kisumu Municipality/Block 7/446 (hereinafter referred to as “the suit property”) was illegally and irregularly allocated to the 2nd Defendant by the 3rd Defendant on 17th December 1990 as unsurveyed commercial plot. The Plaintiff averred that on 24th January 1991, the 2nd Defendant transferred the suit property to the 1st Defendant with the approval and consent of the 3rd



- Defendant. The Plaintiff averred that the 1st Defendant was issued with a certificate of lease in respect of the suit property on 14th January 1992.
3. The Plaintiff averred that the suit property was not available for transfer to the 1st and 2nd Defendants by the 3rd Defendant and that the purported certificate of lease that was issued to the 1st Defendant was fraudulent, illegal, null and void for all intents and purposes in that the same was issued without the approval of the Interested Party. The Plaintiff averred that the 2nd Defendant's interest in the suit property was fraudulent, illegal, null and void and as such could not be transferred to the 1st Defendant. The Plaintiff averred further that the illegal alienation of the suit property for private purposes was contrary to the intended public purpose for which it was vested upon the Interested Party.
 4. The Plaintiff sought judgment against the Defendants jointly and severally for;
 - a. A declaration that the allocation of the suit property by the 3rd Defendant to the 2nd Defendant was null and void and was ineffectual to confer any right, interest or title upon the 2nd Defendant.
 - b. A declaration that the issuance of a lease by the 3rd Defendant to the 2nd Defendant over the suit property was null and void and ineffectual to confer any right, interest or title upon the 2nd Defendant.
 - c. A declaration that the subsequent transfer of the lease in respect of the suit property and the issuance of a certificate of lease to the 1st Defendant was null and void and ineffectual to confer any right, interest or title upon the 1st Defendant.
 - d. An order directing the Chief Land Registrar to rectify the register of the suit property by cancelling the lease registered over the suit property in favour of the 1st Defendant and restoring the property to the Interested Party.
 - e. An order for vacant possession of the suit property and all the improvements thereon.
 - f. An order for a permanent injunction restraining the 1st, 2nd and 3rd Defendants from trespassing, transferring, developing, entering upon, leasing, wasting and/or dealing in any manner with the suit property save by transferring the property to the Interested Party.
 - g. Mesne profits for loss of user by the Interested Party in the form of rental income payable from the date of transfer of the suit property to the 1st and 2nd Defendants up to the date of judgment and in the alternative, general damages for loss of user of the suit property by the Interested Party.
 - h. Costs of the suit.
 - i. Interest on mesne profits/general damages and costs at court rates.
 5. The 1st Defendant filed a statement of defence on 22nd August 2022. The 1st Defendant averred that Satwant Singh Dhanjal, deceased (hereinafter referred to only as "the 1st Defendant") was the lawfully registered proprietor of the suit property and a holder of a certificate of lease issued on 14th January 1992 for a term of 99 years from 1st January 1991. The 1st Defendant averred that the suit property was sold to the 1st Defendant by the 2nd Defendant through an agreement of sale dated 11th January 1991 after the Commissioner of Lands issued the 2nd Defendant with a letter of allotment dated 17th December 1990. The 1st Defendant averred that the suit property was informally transferred to the 1st Defendant by the 2nd Defendant with the approval and consent of the 3rd Defendant. The 1st Defendant denied all the particulars of fraud and illegality pleaded against the 1st Defendant.



6. The 1st Defendant averred that the 1st Defendant was the legal and registered proprietor of the suit property and had over the years paid land rates and land rent to the Government of Kenya. The 1st Defendant averred that the Plaintiff had failed to disclose any illegality and/fraud on the part of the 1st Defendant. The 1st Defendant averred further that the 1st Defendant was a bona fide purchaser of the suit property for value.
7. The 1st Defendant averred that his interest in the suit property was indefeasible under both the Registered *Land Act*, Chapter 300 Laws of Kenya (now repealed) and the *Land Registration Act* 2012. The 1st Defendant averred that the suit property did not belong to the Interested Party. The 1st Defendant averred that the suit property was situated outside the boundary of the Interested Party's premises. The 1st Defendant averred that the Plaintiff's suit was brought in bad faith. The 1st Defendant averred that the suit was brought dishonestly with the connivance of the Interested Party who was not joined as a party to the suit although it was the complainant.
8. The 3rd Defendant filed a statement of defence on 4th August 2022. The 3rd Defendant denied that the suit property was part of a larger parcel of land belonging to the Interested Party that was illegally and irregularly allocated to private persons. The 3rd Defendant averred that the suit property was not reserved as a railway reserve nor was it vested upon the Interested Party upon the dissolution of the East Africa Railways Corporation. The 3rd Defendant averred that the allocation of land was a process that involved several persons and that the part that he played in the process of allocating and transferring the suit property to the 2nd and 1st Defendants was within his powers as the Commissioner of Lands.
9. The 3rd Defendant averred that the alienation of the suit property was legal and within the powers of the Commissioner of Lands conferred upon him under the Government Lands Act, Chapter 280 Laws of Kenya (now repealed). The 3rd Defendant averred that the allocation of the suit property was legal and for that reason, the Plaintiff was not entitled to mesne profits or damages for loss of use. The 3rd Defendant averred that the Plaintiff's suit was unconstitutional, selective, frivolous, scandalous and disclosed no cause of action against the 3rd Defendant in his personal capacity. The 3rd Defendant averred that he ceased to hold the office of the Commissioner of Lands 23 years ago and as such the suit against him offended Section 6 of the *Government Contracts Act*, Chapter 25 Laws of Kenya. The 3rd Defendant averred further the suit violated his fundamental rights guaranteed under Articles 25, 27, 40, 47 and 50 of the *Constitution* of Kenya 2010. The 3rd Defendant averred that he would raise a preliminary objection on the competency of the suit against him.
10. The court heard the matter and delivered a judgment on 4th July 2024. In the judgment, the court found that the suit property had been reserved for the Interested Party when it was allocated to the 2nd Defendant on 17th December 1990 as Kisumu Municipality-Unsurveyed Commercial Plot and as such, the same was not available to the Commissioner of Lands for alienation. The court found that the suit property was allocated to the 2nd Defendant and transferred to the 1st Defendant unlawfully and unprocedurally. The court held that the suit property having been reserved for the Interested Party was not available for allocation and even if it was, the process through which the same was allocated was irregular and unlawful.
11. The court held further that since the allocation of the suit property to the 2nd Defendant was illegal and irregular, the 2nd Defendant had no proprietary interest in the suit property that it could pass to the 1st Defendant. The court held that the purported transfer of the suit property by the 2nd Defendant to the 1st Defendant did not confer upon the 1st Defendant any valid interest in the suit property. In conclusion, the court entered judgment for the Plaintiff against the Defendants for;



- a. A declaration that the allocation of all that property known as Kisumu Municipality/Block 7/446 (the suit property) by the 3rd Defendant to the 2nd Defendant as Kisumu Municipality-Uns. Commercial Plot was null and void and was ineffectual to confer any right, interest or title in the property upon the 2nd Defendant.
 - b. A declaration that the subsequent transfer of the suit property by the 2nd Defendant to the 1st Defendant and the issuance of a lease and a certificate of lease to the 1st Defendant by the 3rd Defendant in respect thereof was null and void and ineffectual to confer any right, interest or title in the property upon the 1st Defendant.
 - c. An order directing the Chief Land Registrar to rectify the register of the suit property by cancelling the registration of the 1st Defendant as the leasehold proprietor of the suit property together with the lease and certificate of lease that were issued to the 1st Defendant and restoring the property in the name of the Interested Party as the leasehold proprietor thereof.
 - d. An order for 1st Defendant to vacate and handover possession of the suit property to the Plaintiff and the Interested Party within 90 days from the date of the judgment in default of which the Plaintiff was at liberty to apply for warrants for the 1st Defendant's forceful eviction from the property.
 - e. An order for a permanent injunction subject to order (d) above restraining the 1st and 2nd Defendants by themselves or through their agents, servants or employees from trespassing, transferring, developing, entering upon, leasing, wasting and/or dealing in any manner whatsoever with the suit property save by transferring or handing over possession of the property to the Interested Party.
12. What is now before the court is the 1st Defendant's application brought by way of a Notice of Motion dated 24th July 2024 seeking an order of stay of execution of the judgment and decree of the court delivered herein on 4th July 2024 pending the hearing and determination of the intended appeal to the Court of Appeal. The application was brought on several grounds set out on the face of the application and the supporting affidavit. The 1st Defendant averred that it was dissatisfied with the judgment of this court delivered on 4th July 2024 and intended to appeal against the same to the Court of Appeal. The 1st Defendant averred that it had already filed a Notice of Appeal. The 1st Defendant averred that the Interested Party had expressed an intention of taking possession of the suit property in line with the terms of the judgment of the court by serving him with 30 days' notice to vacate. The 1st Defendant averred that it would suffer irreparable loss and damage if the execution of the judgment delivered on 4th July 2024 was not stayed. The 1st Defendant averred that its intended appeal to the Court of Appeal would be rendered nugatory if the stay sought was not granted. The 1st Defendant averred that it was willing to furnish such security as the court may order as a condition for granting the stay sought. The 1st Defendant annexed to his affidavit in support of the application a copy of the Notice of Appeal and copies of notices to vacate served upon it by the Interested Party.
13. The Plaintiff opposed the application through a replying affidavit sworn by Jemimah Gathungu on 5th September 2024. The Plaintiff averred that the court after hearing its case found that the suit property was public land and that the same had been acquired by the 1st Defendant illegally and fraudulently. The Plaintiff averred that it would serve the public interest if the stay sought was not granted. The Plaintiff averred that the 1st Defendant had leased out the suit property to a tenant at a monthly rent of Kshs. 472,500/- which he wished to continue receiving from the property. The Plaintiff averred that



the 1st Defendant had not demonstrated that he stood to suffer substantial loss if the stay sought was not granted. The Plaintiff averred that the application was misconceived and lacked merit.

14. The 1st Defendant filed a further affidavit sworn by the 1st Defendant on 9th October 2024. The 1st Defendant averred that its appeal to the Court of Appeal was arguable and had a good chance of success. The 1st Defendant denied that the application was intended to prolong his occupation of the suit property.

15. The application was argued by way of written submissions. The 1st Defendant filed his submissions dated 18th October 2024. The Plaintiff also filed submissions dated 18th October 2024. I have considered the application together with the affidavits of the 1st Defendant filed in support thereof. I have also considered the replying affidavit filed by the Plaintiff in opposition to the application. Finally, I have considered the submissions by the advocates for the parties. The 1st Defendant's application was brought principally under Order 42 Rule 6 of the Civil Procedure Rules which provides that:

6.(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under sub-rule (1) unless-

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as ultimately be binding on him has been given by the applicant.

16. In *Kenya Shell Limited v. Karuga* (1982 – 1988) I KAR 1018 the court stated that:

“It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the cornerstone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence, it is difficult to see why the respondents should be kept out of their money.”

17. I am satisfied that the 1st Defendant's application was brought without unreasonable delay. I am also persuaded that the 1st Defendant is likely to suffer substantial loss if the stay sought is not granted. In the judgment the execution of which is sought to be stayed, the court ordered that the title held by the 1st Defendant in respect of the suit property be cancelled and the ownership of the property be restored to the Interested Party. The court also ordered that the 1st Defendant hands over possession of the suit property to the Plaintiff and the Interested Party within 90 days from the date of the judgment (now past) or risk being forcibly evicted from the property. It follows therefore that if the stay sought is not granted, the 1st Defendant's title to the suit property would be cancelled. The 1st Defendant also risks being evicted from the suit property while his appeal to the Court of Appeal is pending. On the issue



of security, the 1st Defendant had given an undertaking that it would abide by any order for security that the court may give as a condition for the stay sought.

18. For the foregoing reasons, I find merit in the 1st Defendant's Notice of Motion application dated 24th July 2024. The application is allowed on the following terms;
- a. The execution of the judgment delivered by this court on 4th July 2024 is stayed pending the hearing and determination of the 1st Defendant's appeal to the Court of Appeal.
 - b. Pending the hearing and determination of the said appeal by the 1st Defendant to the Court of Appeal, the 1st Defendant is restrained from selling, transferring or charging all that property known as Title No. Kisumu Municipality/Block 7/446 together with the developments and improvements thereon.
 - c. Pending the hearing and determination of the said appeal by the 1st Defendant to the Court of Appeal, there shall be an inhibition inhibiting the registration of any other or further dealings with all that property known as Title No. Kisumu Municipality/Block 7/446 together with all the developments and improvements thereon.
 - d. Pending the hearing and determination of the said appeal by the 1st Defendant to the Court of Appeal, the 1st Defendant shall deposit in an interest-earning bank account in the joint names of the advocates for the 1st Defendant and the advocates for the Plaintiff a sum of Kshs. 2,000,000/- as security within 60 days from the date hereof in default of which the stay shall lapse automatically without any further reference to the court.
 - e. Each party shall bear its costs of the application.

DATED AND DELIVERED AT KISUMU ON THIS 23RD DAY OF JANUARY 2025.

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

N/A for the Plaintiff

Mr. Maganga for the 1st Defendant

Mr. Obuya for the Interested Party

Ms. J. Omondi-Court Assistant

