



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

PETITION NO. 29 OF 2019

KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANISATION (KALRO).....PETITIONER

AND

EDISON SONJE TAURA & 4 OTHERS.....RESPONDENTS

RULING

(Application for injunction filed by the petitioner; petitioner claiming to own land and alleging invasion of it by the respondents; order that status quo be maintained)

1. What is before me is an application dated 22 June 2019 which was filed contemporaneously with this petition. It is an application for injunction which is opposed. I am guided by the principles laid down in the case of *Giella vs Cassman Brown (1973) EA 373* wherein it was affirmed that to succeed in an application for injunction, one needs to demonstrate a prima facie case with a probability of success, show that he stands to suffer loss that may not be compensable by an award of damages, and where the court is in doubt, it will decide the application on a balance of convenience.

2. What then is the applicant's case? The applicant commenced this case through a Constitutional Petition. It is pleaded inter alia that the applicant (popularly known by its acronym KALRO) is a State Corporation established by the Kenya Agricultural and Livestock Research Act, No. 17 of 2013, with a mandate to promote research in crops, livestock, genetic resources and biotechnology in Kenya. It is mentioned that KALRO is the successor to the Kenya Agricultural Research Institute (KARI). It is pleaded that KARI owned various parcels of land throughout Kenya, for purposes of carrying out its research mandate, and among them is the land parcel MN/III/1450 (original) measuring about 13.40 Ha. It is claimed that this land was unlawfully subdivided by the then Commissioner of Lands into 5 sub-plots being MN/III/2944, 2945, 2946, 2947 and 2948, and allocated to individuals (not the respondents) around the year 1995. It is said that this allocation was illegal, as KARI was in possession and use, and had developed the land with an administration block, a guest house, laboratories, a library and staff houses, and was also conducting its research on the land until 1998, when the private allottees evicted its staff. So as to recover the land, the Kenya Anti-Corruption Commission (KACC) filed the suit Mombasa High Court Miscellaneous Application No. 27 of 2008, and subsequently, the private titles were cancelled by the Registrar of titles through Gazette Notice No. 15570 of 26 November 2010. It is pleaded that none of the allottees challenged the cancellation except the allottees of the plots No. 2944, 2945 and 2946 who filed the suit ELC No. 580 of 2001 which is still pending. It is said that there are conservatory orders issued in that case and which have hampered the efforts of the petitioner to process the original title MN/III/1450.

3. It is pleaded that in December 2018, despite being aware of the petitioner's rights over the land parcels No. 2944, 2945 and 2946, which comprises of ocean front land, the respondents entered the land and took possession. It is said that they cleared it, ploughed it and vandalized the petitioner's buildings and erected temporary structures. Owing to this action, the applicant contends that its statutory mandate has been hampered and despite their pleas, the acts of trespass have continued. The applicant alleges a violation of Article 62 (1) of the Constitution, as the land is public land under a State Organ, and Article 40 (3) of the Constitution, together with the provisions of the Land Act. In the petition, the applicant inter alia seeks for a declaration of ownership of the land parcels No. 2944, 2945 and 2946; a declaration that the respondents have no right over these parcels of land; a permanent injunction against the respondents from being on the land; vacant possession; general damages for trespass; and costs of the suit. I have already mentioned that alongside the petition was filed this application for injunction.

4. The respondents have opposed the application through the replying affidavit of Joshua Katana Juba, the 4th respondent. He has deposed that he and his family are not invaders of the land since the land has been in their family possession from time immemorial. He has deposed that in 1970, KALRO (sic) came to explore the land so as to acquire it for research, and wanted to compensate the locals, but they found the land rocky and they moved to another area (Mzambarani). He denies that the applicant invested in buildings on the land. He avers that the buildings on the land are old colonial buildings and none was built by the applicant. He denies that they have demolished any and contends that they have fallen on their own. He claims that his family have been cultivating the land from time immemorial and he has now build a commercial hotel on the land in concert with his family. He states that the National Land Commission, through a letter dated 8 February 2019, invited any person purporting to have ownership of the land and no title has been issued to the applicant. He contends that the

applicant is being malicious by only claiming the ocean front yet the land is 104 acres. He avers that the ocean front is rocky and no agricultural activity can be carried out on the land.

5. A supplementary affidavit was filed by the applicant but I have not seen anything significantly new being raised.

6. Counsel were invited to file written submissions but I have only seen the submissions filed by counsel for the applicant and I have gone through the same.

7. At the outset, I must say that I have an issue with the manner of commencement of this suit. Why it is filed as a constitutional petition is not clear to me, yet, what it seeks is nothing more than private law remedies of vacant possession, general damages, and permanent injunction. That however is an issue that can be dealt with at a later stage as parties have not had a chance to address me on the same.

8. On the application herein, and having gone through the affidavits filed, it is apparent to me that KARI, the predecessor of the applicant, was in possession of the disputed land before fresh titles were issued. I have seen the cancellation of the subdivided titles through the Gazette Notice No. 15570 of 26 November 2010, and the contention of the applicant, that only the allottees of the Plots No. 2944, 2945 and 2946, have not challenged the cancellation of these titles. The other subplots appear to be subject of litigation in other suits. Prima facie, it would mean, that upon cancellation of these titles, the land reverted back to the applicant's predecessor and now to the applicant. The respondents state that they have been on the land from time immemorial, but assuming that this is true, I am not persuaded, at this stage of the proceedings, that such claim would override the proprietary rights of the applicant. Further, apart from that mere deposition, I have not been shown anything to buttress this claim that they have been on the land since time immemorial. The respondents have in fact demonstrated no documentary proof to show that they have title to the land or some right to own it. All they have annexed is a letter from the National Land Commission, dated 8 February 2019, being a notice of intention to allocate land. I have not seen the land parcels herein within that notice. I am thus persuaded, at this point of the proceedings, that the applicant has demonstrated a prima facie case with a probability of success.

9. However, I can see that the respondents have made a few developments on the land, and I wonder where the applicant was, when all these developments were being made. The applicant has not been precise on when the respondents entered the land and commenced their developments. It vaguely states December 2018, and even assuming this is true, I wonder why the applicant did not immediately come to court. If I issue the order of injunction, in the manner sought by the applicant, then this would be tantamount to an eviction of the respondents without the matter having been fully heard. Having said that, it is nevertheless apparent to me that unless the respondents are restrained from wasting the land, they may continue doing so, and this may forever change the character of the land, such that in the event that the petitioner succeeds, it may find land that has been seriously wasted, and it may have to use huge resources to restore it.

10. From the foregoing, I am of opinion that the best order to make is one of status quo. Let no party make any additional developments on the land until this suit is heard and determined the current status quo on possession of the land be maintained until this suit is heard and determined. The costs of this application will be costs in the cause.

11. Orders accordingly.

DATED AND DELIVERED THIS 22ND DAY OF MARCH 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA