



**Registered Trustees of the Archdiocese of Kisumu (Suing on Behalf of St Francis Riwo Church) v Aoko (Environment & Land Case E033 of 2024) [2025] KEELC 422 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 422 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE E033 OF 2024**

**E ASATI, J**

**FEBRUARY 6, 2025**

**BETWEEN**

**REGISTERED TRUSTEES OF THE ARCHDIOCESE OF KISUMU ... PLAINTIFF  
SUING ON BEHALF OF ST FRANCIS RIWO CHURCH**

**AND**

**JOSEPH AOKO ..... DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 11<sup>th</sup> November 2024 brought by the plaintiff pursuant to the provisions of Order 40 Rules 1, 2 & 4, Order 50 Rules 1 & 3 of the Civil Procedure Rules and sections 3 & 3A *Civil Procedure Act*.

The application seeks for orders that:

- a. pending the hearing and determination of the suit, the court do issue an order of temporary injunction restraining the Defendant/Respondent, his agents, servants, nominees or any such person from entering, tilling, selling or dissipating the plaintiff/applicant's piece of land known as Kisumu Municipal/N9/93/15.
- b. the Officer in Charge of police station in Kisumu area be ordered to ensure there is compliance of the order.
- c. Costs of be borne by the Respondent.
- d. The court issues any further orders as may be necessary to give effect to the foregoing orders.

2. The application was supported by the averments in the Supporting Affidavit of Rev. Fr. Vincent Ouma sworn on 11<sup>th</sup> November 2024.



3. The application was opposed vide the grounds of opposition contained in the Statement of Grounds of Opposition dated 11<sup>th</sup> December 2024 filed on behalf of the Respondent.
4. The application was canvassed by way of written submissions. On behalf of the applicant written submissions dated 17<sup>th</sup> January 2025 were filed. Counsel relied on the provisions of Order 40 Rule 1 and the case of King Investment Management Limited vs Rivatex East Africa Limited, the case of Mirao Limited vs First American Bank of Kenya Limited (2003)eKLR and submitted that the applicant has exhibited copies of letter of allotment, receipts of payment of the allotment charges as required by government which is evidence that the Respondent and anyone who tries to acquire or enter the land is a trespasser and should be stopped by the court.
5. On whether the applicant stands to suffer irreparable injury if the orders sought are not granted, Counsel relied on the case of Pius Kipchirchir vs Frank Kemeli Tenai (2018)eKLR where the court held that irreparable injury means the injury that cannot be adequately compensated for in damages. Counsel submitted that the Respondent's continued trespass onto the suit property and forceful occupation of it and activities thereon alienates the land from the owner.
6. Counsel submitted that the balance of convenience tilts in favor of granting the application.
7. On behalf of the Respondent it was submitted that the sole issue for determination is whether the Applicant has satisfied all the pre-requisite requirements for grant of a temporary injunction.
8. Counsel relied on the case of Giella -vs- Cassman Brown Co. Ltd [1973]EA 358 at page 360 on the conditions for grant of temporary injunction. Counsel submitted that the Plaintiff had failed to establish a prima facie case with a probability of success. That the Plaintiff has also failed to demonstrate that it is likely to suffer irreparable harm that no damages can remedy.
9. The substantive prayer sought in the application is for temporary injunction pending hearing and determination of the suit.
10. The grounds for grant of temporary injunction are contained in Order 40 Rule 1 Civil Procedure Rules 2010 and, as rightly submitted by both parties, in the case of Giella vs Cassman Brown Co. Ltd (1973) 358 that the Applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience. A prima facie case was as stated in the case of Mrao Ltd vs First American Bank Kenya Ltd & 2 Others [2003] eKLR is -  
  
“a prima facie case in a civil Application includes but is 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 that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
11. In the present case, the grounds advanced for seeking the order are that the applicant is the absolute registered proprietor of all that parcel of land known as Kisumu/Municipal/N9/93/15 measuring approximately 2.0 acres that the Respondent without the permission of the applicant occupied a portion of the suit land and put up permanent and semi-permanent structures and that the despite several complaints and demands made to the Respondent, he has refused to vacate.
12. In the Supporting Affidavit, it was deposed on behalf of the applicant that it was in the year 2023 when the applicant found out that the Respondent had encroached onto the applicant's land and fenced off a portion thereof. That efforts at amicable settlement failed. That the Respondent has disregarded the



use, enjoyment and vacant possession of the applicant's property. That the Respondent has refused to stop interfering with the suit property and continues in the occupation thereof, thereby denying the applicant the right of occupation.

13. On the other hand, the Respondent averred in the Grounds of Opposition that the Respondent has been wrongly sued in the case. That the applicant has not exhibited evidence of trespass in the form of a map or surveyor's report. That there is an underlying issue with the land parcel in the adjudication section which issue has been pending since 1976. That the applicant has not demonstrated the irreparable loss it is likely to suffer if the orders are not granted.
14. In the wording of the provisions of Order 40 Rule 1, a temporary injunction is intended to stop imminent danger that is likely to waste damage or alienate the subject property or cause the suit property to be wrongly sold. It is not meant to have the effect of an eviction order.
15. In the present case, it is the Applicant's case that the Respondent already encroached onto the land, took possession, constructed permanent and semi-permanent structures and fenced it off. The year or date when all these took place is not disclosed. And although the applicant claims that it was in the year 2023 that it discovered the encroachment, it was not until the month of November 2024 that the suit was filed and the present application made.
16. I find that a prima facie case has not been established. There was no evidence exhibited to show the encroachment. The case of the Respondent is that there is a problem with the map of the adjudication section where the suit land is situated. This is a matter that will require hearing of the evidence and perhaps the input and a land surveyor in order for the court to be able to determine the rights of the parties.
17. For the foregoing reasons, I find that the application lacks merit. The application is hereby dismissed. Cost of the Respondent.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Marucha for the Plaintiff/Applicant.

No appearance for the Defendant/Respondent.

