



Mangi & 5 others v Noor (Environment & Land Case E003 of 2024) [2024] KEELC 1191 (KLR) (4 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1191 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E003 OF 2024**

FM NJOROGE, J

MARCH 4, 2024

BETWEEN

- CHARO KARISA MANGI 1ST PLAINTIFF**
- GEORGE KARISA MANGI 2ND PLAINTIFF**
- JEFA KARISA MANGI 3RD PLAINTIFF**
- KAZUNGU SULUBU MANGI 4TH PLAINTIFF**
- LOICE KADZO 5TH PLAINTIFF**
- ROSE KARISA MANGI 6TH PLAINTIFF**

AND

MOHAMED OSMAN NOOR DEFENDANT

RULING

1. This ruling pertains to the Plaintiffs’ Notice of Motion dated 24th January 2024 which was filed together with the Originating Summons evenly dated. In the said application brought under section 1A, 1B, and 3A of the *Civil Procedure Act* and order 40 rule 1 and 2 of the Rules thereon, the Plaintiffs seek the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That an order of injunction do issue against the Respondent, their agents, servants, attorneys, assigns or representatives from entering, remaining, encroaching into, developing, constructing or in any other way whatsoever interfering with the plot owned and occupied by the Plaintiffs/applicants exercised from the larger plot Land Portion No. 7652 (original



number 570(3)) measuring approximately 12 acres in Malindi pending the hearing and determination of this suit.

- d. Costs of this application.
2. The application is premised on the grounds set forth in the Notice of Motion and the Supporting Affidavit of Charo Karisa Mangi sworn on 24th January 2024. The gist of the said affidavit is that the Plaintiffs have been living continuously without any interruptions on the Land Portion No. 7652 (original number 570(3)) (hereinafter “the suit land”) for a period of over 50 years until recently when they learnt that the Defendant was claiming ownership of the same on the basis that he allegedly purchased the same in 2002. The Plaintiffs are also apprehensive that they will be evicted from the suit land following an eviction notice issued in ELC Case No. 296 of 2016, where they allege that they were never served with the pleadings thereof. The Plaintiffs also allege that the Defendant has began subdividing the suit land.
 3. On 25th January 2024, this court issued directions that the application be served upon the Defendant and an affidavit of service be filed. This was evidently done. As per the affidavit of service sworn by one Samson Kimbeja on 1st February 2024, service was effected upon the Defendant on 31st January 2024 who declined to acknowledge receipt thereof. Despite such service, the Defendant has since failed to enter appearance or respond to the application. The same is therefore unopposed.
 4. Further, the court also issued directions that the application is canvassed by way of written submissions. The Plaintiffs filed their submissions on 13th February 2024, which I have carefully considered.
 5. The sole issue for determination is whether the Plaintiffs have met the conditions for the grant of a temporary injunction.

Analysis And Determination

6. The conditions that one must meet in order for the court to grant a temporary injunction were set out in the case of *Giella -v- Cassman Brown & Company Ltd* 1973 EA 358 as follows:

“First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”
7. In the case of *Mrao -v- First American Bank of Kenya Limited* (2003) eKLR, Bosire JA (as he then was) stated as follows:

“A prima facie case is one 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.”
8. Learned counsel for the Plaintiffs contended that the Plaintiffs are entitled to the suit property currently registered in the Defendant’s name measuring approximately 12 acres by way of adverse possession as the Plaintiffs have been in quiet, peaceful and uninterrupted occupation of the said portion for a period exceeding 50 years. The Plaintiffs allege that sometime in 2021 the Defendant through the involvement of the police attempted to evict them on the basis of judgment issued in another suit while they were not parties thereto.



9. In the case of *Nguruman Limited -v- Jan Bonde Nielsen & 2 Others* [2014] eKLR the Court held as follows:

“We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini-trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title. It is enough if he can show that he has a fair and bona fide question to raise to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or as otherwise put on a preponderance of probabilities. This means that the court takes the view that on the face of it the applicant’s case is more likely than not to succeed.”

10. The principle is that at this interlocutory stage, the court should not make up its mind on whether an applicant has a guaranteed case as all that an applicant needs to demonstrate is that he has an arguable case. In the circumstances, I am of the view that the Plaintiffs have demonstrated that they have a prima facie case with a probability of success.
10. The second condition which the Plaintiffs must satisfy is to demonstrate that if the order of injunction is not granted, they shall suffer irreparable loss. The Plaintiffs’ averments on the Defendant’s intention to evict them are not challenged. It is also not disputed that the Plaintiffs are in occupation of the suit land. Order 40 rule 1 (a) and (b) of the Civil Procedure Rules enjoins this court to protect any property in a dispute that is in danger of being wasted, damaged or alienated by any party to the suit in execution of a decree or that the Defendant threatens to remove or dispose the property. I have carefully considered the application and affidavit thereto, I have no doubt that there is need to preserve the suit land pending the hearing and determination of this suit on merit.
11. The upshot is that the application dated 24th January 2024 is meritorious. It is hereby allowed as prayed. Parties shall file their comprehensive trial bundles duly paginated and indexed, the plaintiff within the first 21 days hereof and the defendant within 21 days following, and appear before the court for a mention on 22nd May 2024 for issuance of a hearing date.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 4TH DAY OF MARCH 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

