



**Equity Bank Kenya Limited v Nairobi City County (Environment & Land
Petition E014 of 2024) [2024] KEELC 3665 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3665 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND PETITION E014 OF 2024

JA MOGENI, J

MAY 7, 2024

**IN THE MATTER OF: THE ENFORCEMENT OF THE BILL OF RIGHTS
UNDER ARTICLE 22 AND 23 OF THE
CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF: THE VIOLATION OF ARTICLE 47 AND ARTICLE
40 READ TOGETHER WITH ARTICLE 260 OF
THE CONSTITUTION OF KENYA 2010**

BETWEEN

BETWEEN

EQUITY BANK KENYA LIMITED PETITIONER

AND

NAIROBI CITY COUNTY RESPONDENT

RULING

1. This ruling is in respect of two applications. The Chamber Summons Application dated 27/03/2024 was brought under Rule 3 of the High Court (Practice and Procedure Rules). The Petitioner/Applicant seeks the following orders:
 1. Spent.
 2. Costs of the application be in the cause.



2. The Notice of motion Application dated 14/03/2024 was brought pursuant to Rule 23 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 and the inherent power of the court. The Petitioner/Applicant seeks for the following orders:
 1. Spent.
 2. Spent.
 3. Pending the hearing and determination of this petition there be an order of injunction restraining the respondent whether by itself, its employees, servants and/or agents or any person acting under its instructions, from trespassing onto, or in any manner interfering, encroaching on, or whatsoever dealing with Land Reference Numbers 28223/33 (Original Number 28223/2) including plots C1, C2, C3, C4, C5, C6, C7, C8, C9, C10 and C11 excised from Land Reference Number 28223/33 (Original Number 28223/2).
 4. Pending the hearing and determination of this petition, a mandatory injunction be issued to compel the respondent to pull down all the structures it has erected on Land Reference Numbers 28223/33 (Original Number 28223/2) including plots C1, C2, C3, C4, C5, C6, C7, C8, C9, C10 and C11 excised from Land Reference Number 28223/33 (Original Number 28223/2) and remove the building materials or anything that they have deposited or caused to be placed on the C-Plots.
 5. The Officer Commanding Police Division Starehe, or any other police officer commanding a police station, be directed to enforce any orders made herein.
 6. The costs of this application be awarded to the petitioner.
3. When the Application dated 27/03/2024 came up for directions on 8/04/2024, counsel for the Petitioner prayed for the Chamber Summons dated 27/03/2024 to be marked as spent in order to concentrate on the application dated 14/03/2024.
4. The Application dated 14/03/2024 was supported on the grounds stated in paragraph (1) – (11) on the face of the Application, the annexed affidavits sworn on 14/03/2024 by Moses Ndirangu and Charles Gathogo, on behalf of the Petitioner herein.
5. The Application is not opposed. The Respondent was served with Application dated 14/03/2024 on 15/03/2024. The Respondent filed a notice of appointment of advocate's on 27/03/2024. The Respondent was served with a new application dated 27/03/2024 on 28/03/2024. When the application dated 27/03/2024 came up for directions on 8/04/2024, the Respondent was granted 5 days to put in a response. By 15/04/2024, the Respondent had not filed its response to the Application.
6. The parties agreed to canvass the Application by way of written submissions and the Application was reserved for Ruling. By the time of writing this Ruling, none of the parties had duly submitted.
7. I have had time to analyze the emerging issues therein and since the second Application dated 27/03/2024 is marked as spent, I shall only focus on the initial application dated 14/03/2024. The initial Application relates to the grant of temporary injunctive relief pending the hearing and determination of this petition as well as the grant of a mandatory injunction pending the determination of this petition. In my view, the issues for determination at this stage are:
 - a. Whether the Petitioner/Applicant has met the criteria for the grant of order of temporary injunction pending the hearing and determination of this Petition.



- b. Whether the Petitioner/Applicant should be granted orders of Mandatory injunction at the interlocutory stage.
8. I have read the application, affidavits in support of the application and their accompanying annexures. I have also taken into consideration the judicial decisions with regards to the grant of orders of temporary injunction and grant of orders of mandatory injunction.
9. The first issue for determination is whether the Petitioner has met the criteria for the grant of an order of temporary injunction pending the hearing and determination of this Petition.
10. The substantive law on this matter is Order 40 Rule 1(a) of the Civil Procedure Rules which provides:
“Where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongly sold in execution of a decree ... the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”
11. It was long established and continues to be good Law that temporary injunctions are granted upon the satisfaction of tripartite conditions to wit: whether the Applicant has established a prima facie case; whether upon examination of the prevailing circumstances it becomes clear that the Applicant stands to suffer irreparable loss that the Respondent would be hard pressed to assuage by an award of damages and finally, where there was still doubt, it would be in order to consider in who’s favour the balance of convenience tilted. These principles were established in *Giella vs. Cassman Brown & Co. Ltd* 1973 E.A 358.
12. While discussing the conditions precedent to obtaining an order of injunctive relief, the Court of Appeal in *Nguruman Ltd v. Jan Bonde Nielsen & 2 Others*, [2014] eKLR observed that:
“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:
a. establish his case only at a prima facie level,
a. demonstrate irreparable injury if a temporary injunction is not granted, and
b. ally any doubts as to (b) by showing that the balance of convenience is in his favour.
13. Bearing the above in mind, the first stop of the journey towards my final determination is whether the Petitioner/Applicant has established a prima facie case. A prima facie case was defined in *Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, where Bosire, JA stated as follows:
“So what is a prima facie case? I would say that in civil cases it is a case in 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.”



14. The Court of Appeal deliberating what amounted to a prima facie case in Nguruman (Supra) made the following comments: -

“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 as 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 no more than that the Court takes the view that on the face of it the applicant’s case is more likely than not to ultimately succeed.”

15. Having established the school of judicial thought I ought to abide, I shall now fix my gaze upon this instant application all the while cautioning myself not delve into the intricacies of the case as that is a preserve of the substantive suit.
16. A key point of contention in this matter is the ownership of the suit property. The Petitioner’s Director of Corporate Banking deponed that Muga Developers Limited is the registered proprietor of Land Reference Number 28223/33 (Original 28223/2). The Petitioner claims that Land Reference Numbers 28223/33 - C1,2, C3, C4, C5, C6, C7, C8, C9, C10 and C11(C-Plots) which were excised from Land Reference Number 28223/33 (Original 28223/2) are charged to them to secure credit facilities advanced to Muga Developers Limited, New Attitude Limited, Sanyi fituan Sensen Investment Limited and WD Real Estate Company Limited. The petitioner has an interest over these properties as chargee. The value of the securities held by the petitioner are above Kshs. 1 billion. It has also been deponed that the Respondent is claiming ownership of the suit property. That the C plots were surrendered to it and that it is the owner of those properties. The petitioner further claims that a survey was conducted on Land Reference Number 28223/33 (Original 28223/2) in June 2022 by the Director of Surveys and the report dated 22/06/2022 confirmed the correct acreage of the property that is charged to the petitioner but did not indicate that any portion of Land Reference Number 28223/33 (Original 28223/2) should have been surrendered to the respondent.
17. In considering the above circumstances, it is better to safeguard and maintain the status quo for a greater justice than to let the status quo be disrupted by not granting the interlocutory injunction and after hearing the application, find that a greater injustice has been occasioned. The guiding principle of the overriding objective is that the court should do justice to the parties before it and their interests must be put on scales.
18. The Black’s Law Dictionary, Butter Worth’s 9th Edition, defines status quo as a Latin word which means ‘the situation as it exists’. The purpose of an order of status quo has been reiterated in a number of decisions.
19. In the case of Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR, Odunga J. stated: -

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing



state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”

20. In the case of Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR, the purpose of a status quo order was explained as follows: -

“ ... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

21. Having considered the facts that have emerged in this case and the evidence adduced by way of affidavit, it is the view of the court that apart from preserving the substratum of the subject matter, an order of status quo is a case management strategy, where the Court will be keen to prevent prejudice as between the parties to a matter pending the hearing and determination of the Petition. The circumstances in this matter demonstrate that both parties as it stands have an interest that needs to be preserved pending the determination of the Petition. To meet the end of justice, neither party should be prejudiced.

22. Having discussed the definition and purpose of a status quo order, the next question is the nature of the order and whether it differs from an injunctive order. In the case of Fatuma Abdi Jillo v Kuro Lengesen & another [2021] eKLR, it was stated as follows: -

“Murithi Jin Boabab Beach Resort as quoted by F. Tuiyot Saifudeen Abdullahi & 4 Others in Mombasa High Court Misc. Civil Cause No. 11 of 2012, described the nature of a status quo order as follows: “In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”

23. Further, in the case of Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others [2015] eKLR, Onguto J. stated that an order of status quo can be given by the court exercising its general jurisdiction and that the order need not necessarily be prayed by the parties and in fact, can be originated by the court.

“Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts’ further orders. It is intended to also freeze the state of affairs. State of affairs however do not



always remain static, so it is always crucial for the court to be very specific and neat in its description of what state of affairs is to be preserved.”

24. Odunga J. in the case of Thugi River Estate Limited (*supra*) goes further to set out the proper manner in which the court ought to frame a status quo order, especially where it is one that the court has originated. He stated that;

“... Ordinarily where it is the court that has prompted a status quo order or has prompted the parties to it, it is more appropriate and exceedingly relevant to describe clearly the state of affairs at the time the order for status quo is issued. It is undesirable to simply make an order of status quo to be maintained without clearly describing the state of affairs then existing and being preserved. Assistance of the counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind.”

25. In summary from the above cases, the following matters relating to status quo orders are emergent; that status quo orders can be made by the court on its own motion in the exercise of its general jurisdiction; that status quo orders can be issued for the purpose of preserving the subject matter of the property, for case management reasons and in a bid to prevent prejudice from being visited against either party to the case; that status quo orders are different from injunctions, meaning that the considerations to be established for grant of injunctions are not necessary under status quo orders; and that a court originating status quo orders to explicitly frame the state of affairs to be preserved.

26. On the prayer for a mandatory injunction compelling the Respondent to pull down structures on the suit property, I am guided by the decision in the case of Joseph Kaloki t/a Royal Family Assembly Vs Nancy Atieno Ouma [2020] eKLR where the court of appeal reaffirmed its decision in Kenya Breweries Limited & another Vs Washington O. Okeyo [2002] eKLR and stated that:

“a mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.

27. The Court also reaffirmed its decision in Shariff Abdi Hassan Vs Nadhif Jama Adan [2006] eKLR where it stated that:

“The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is *prima facie* established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.”

28. I am not convinced that special circumstances exist in this matter that may warrant the grant of a mandatory injunction. I am also not convinced that this case is so clear that it ought to be decided at once. There are competing claims by both parties and these require further interrogation. At this stage I cannot tell for sure that the Respondent has no claim over the suit properties. I therefore decline to grant orders of Mandatory injunction.

29. Arising from all the above, this Honourable Court proceeds to make the following findings. These findings are as follows: -

- a. The Application dated 27/03/2024 is hereby marked as spent.



- b. The Court issues an order for status quo to be maintained on the suit property meaning there shall be no transaction including but not limited to trespassing onto, or in any manner interfering, encroaching on, or whatsoever dealing with whatsoever with regard to Land Reference Numbers 28223/33 (Original Number 28223/2) including plots C1, C2, C3, C4, C5, C6, C7, C8, C9, C10 and C11 excised from Land Reference Number 28223/33 (Original Number 28223/2) until this Petition is heard and determined.
- c. There shall be no further constructions or developments by the Respondent on the suit property and any constructions by the Respondent that is ongoing on the suit property to forthwith cease.
- d. There shall be maintained peace and tranquility by all the parties and their agents at the suit land at all times during the pendency of this Petition until it is heard and determined.
- e. The prayer for mandatory injunction compelling the Respondent to pull down all the structures it has erected on Land Reference Numbers 28223/33 (Original Number 28223/2) including plots C1, C2, C3, C4, C5, C6, C7, C8, C9, C10 and C11 excised from Land Reference Number 28223/33 (Original Number 28223/2) and remove the building materials or anything that they have deposited or caused to be placed on the C-Plots is declined.
- f. Costs shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY MAY 2024.

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MOGENI J

JUDGE

In the virtual presence of :-

Mr. Ondieki for Petitioner

M/s Odhiambo holding brief for Mr. Bake for the Respondent

Ms. C. Sagina: Court Assistant

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MOGENI J

JUDGE

