



Kamkis Trading Company Ltd v Nairobi City County & another (Environment & Land Case E188 of 2024) [2024] KEELC 5226 (KLR) (8 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5226 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E188 OF 2024**

JA MOGENI, J

JULY 8, 2024

BETWEEN

KAMKIS TRADING COMPANY LTD PLAINTIFF

AND

NAIROBI CITY COUNTY 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

RULING

1. This is the Notice of Motion dated 8/05/2024. It is brought under Order 40 rule 1 and 2 of the [Civil Procedure Rules](#) and Section 1A, 1B and 3A of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya. It seeks orders;
 - a. Spent
 - b. Spent
 - c. That the 1st Defendant/Respondent, his servants, employees and agents be restrained from trespassing, demolishing, selling, alienating or in any other way disposing of or dealing with Parcel No. LR 209/7994/1- Dar Salaam pending the hearing of this suit.
 - d. That the OCS Central Police Station to ensure compliance of this court order.
 - e. That costs of this application be in the cause.
2. The grounds are on the face of the application and are as follows;
 - i. That the plaintiff is the registered owner and proprietor of property LR No. 209/7994/1- Dar Salaam.



- ii. The plaintiff/applicant acquire the suit property legally and procedurally and has obtained all the permits and requirements that are needed.
 - iii. That the 1st defendant/Respondent has trespassed on the suit property and is now in the process of demolishing the applicant's suit property.
 - iv. The said demolition is done without any prior notice warning or information as to why the demolition is done within the said suit property.
 - v. It is necessary that this application be allowed in order to preserve the suit property and so as to alleviate any possibility of this case losing its substratum should the 1st defendant proceed with the demolition and further denying the applicant the opportunity to peaceably use its suit land.
 - vi. Disallowing this current application is likely to result in irreparable harm to the plaintiff and its businesses running into unimaginable losses.
 - vii. In the balance of convenience it is proper to allow this application so as to secure the substratum of this case and the plaintiff's constitutional right of access to justice secured under Article 48 of *the Constitution* of Kenya 2010 and the right to have quiet possession on its legally acquired property.
3. The application is supported by the affidavit of Kambale Muyale, the plaintiff/applicant's director herein sworn on the 08/05/2024.
 4. The application is unopposed since the 1st defendant only filed a statement of grounds of opposition through their Counsels on record Musyoki Mogaka & Company Advocates dated 14/05/2024. The plaintiff's evidence is therefore uncontroverted.
 5. On 20/05/2024, while granting orders of Status Quo the court directed as was agreed between the parties to the suit that the application shall be canvassed by way of written submissions. At the time of writing this ruling no party has filed any submissions. That notwithstanding the court still went ahead and wrote the ruling.
 6. It is the Plaintiff's case that it is the registered proprietor of the suit property. That sometime between 8th and 9th May 2024 the 1st defendant entered the suit property through its agents or assigns and started demolish the structure without notice or taking into account the plaintiff's proprietary interests in the suit property.
 7. That the demolitions were unwarranted since the plaintiff was issued with permits and go ahead to acquire and develop the suit property and thus the demolitions are arbitrary and fraudulent and should be retrained.
 8. The plaintiff has particularized the trespass on the part of the 1st defendant as:
 - a. Unlawfully and without permission entering the plaintiff/applicant's property.
 - b. Forcefully entering the plaintiff's property, demolishing the property and building therein.
 9. That the 2nd defendant is all aware that at the time of the illegal demolition the plaintiff is the owner of LR 209/7994/1- Dar Salaam and that the 1st defendant is a trespasser. Thus the plaintiff business operations as a consequence suffered frustration and irreparable damage. That the demolition should be declared as illegal thus the application be allowed.
 10. As the already stated the application is unopposed. The 1st defendant's statement of grounds of opposition only raised points of law. The 1st defendant's stated that it is improperly enjoined to this suit



under Order 1 Rule 3 and Order 1 Rule 9 of the *Civil Procedure Rules*. Further that the 1st defendant's agents, servants and or employees have not trespassed on the suit property or at all.

11. That 1st defendant stated that there is no evidence/proof of any demolitions by the 1st defendant/respondent, its employees, agents, servants produced in court and that without proof of evidence the application against the 1st defendant/respondent does not raise any triable issues. Thus the 1st defendant has failed to establish a prima facie case and since the allegations are unsubstantiated the application fails on a balance of probability.
12. The 1st defendant therefore in opposing the application stated that this application is defective and bad in law and it should be dismissed and or struck out.
13. I have considered the Notice of Motion dated 08/05/2024 and the supporting affidavit together with the annexures. I have considered the grounds of opposition.

Analysis And Determination

14. Having considered the application, pleadings filed and the annexures, I find that the only issue for determination is whether the Applicant has met the threshold for the grant of an order of injunction.
15. The law that governs applications for injunction is premised under Order 40 Rule 1 of the *Civil Procedure Rules* 2010 which provides as follows:-
 1. Where in any suit it is proved by affidavit or otherwise-
 - a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
 - b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

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.
16. The principles applicable in an application for an injunction were laid down in the celebrated case of *Giella Vs Cassman Brown & Co Ltd* [1973] EA 358 where the court held that in order to qualify for an injunction;
 1. First the applicant must show a prima facie case with a probability of success.
 2. Secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
 3. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.
17. The Applicant in an application for injunction must first establish that he has a prima facie case with a probability of success.



18. A prima facie case was defined by the Court of Appeal in *Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others* [2003] eKLR as follows;
- “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.”
19. On the issue as to whether the Applicant has established a prima facie case with a probability of success, the Applicant’s claim over the suit property is anchored on the certificate of titles registered in their name. I have carefully looked at the certificates of title marked as annexure KTL 1 in the Applicant’s supporting affidavit and I find that land parcel number 209/7994/1-Dar Salaam is registered in the names of the Applicant herein. The Applicant has clearly demonstrated that he is the registered owner of suit property thus I am satisfied that the Applicant has established that it has a prima facie case with a probability of success.
20. As regards the issue whether the Applicant will suffer irreparable harm which cannot be adequately compensated by award of damages, the Applicant must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured.
21. The Court of Appeal in *Nguruman Limited Vs Bonde Nielsen & 2 Others* [2014] eKLR held that: -
- “On the second factor, the applicant must establish that he might otherwise suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot adequately be compensated by an award of damages. An injury is irreparable where there is no stand by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation of whatever amount, will never be adequate remedy.”
22. It is not in dispute that the Applicant is the registered owner of land parcel number 209/7994/1-Dar Salaam. The Applicant further averred that the 1st defendant has trespassed on the suit property and is now in the process of demolishing the applicant’s property to which the applicant has approval for erection of the building, a certificate of occupation issued by the 1st respondent and the necessary permits and requirements needed. The applicant annexed photographs showing the demolition.
23. From the Applicant’s pleadings and annexures, it is evident that the Applicant has been possession of the suit land. It is also evident that the Respondents have trespassed on the suit property and are in the process of demolishing the suit property as averred by the applicant.
24. The Applicant having demonstrated that he is the registered owner and occupier of the suit properties, that the Respondents have trespassed and maliciously destroyed his property, I find that the Applicant has established that he is likely to suffer irreparable harm which cannot be adequately compensated by way of damages if the orders sought are not granted.
25. I find that the balance of convenience it tilts in favour of the Applicant as he is the registered owner and occupier of the suit properties.



26. In determining where the balance on convenience lies, considering the facts of this case in totality, I find that the balance of convenience is not in favour of the Applicant.
27. Consequently, I find that the application under determination has merit and that the plaintiff/ applicant has satisfied the test for granting the injunction sought as laid down in the *Giella vs Cassman Brown case*.
28. The upshot of the foregoing is that the application dated 8/05/2024 is merited and I proceed to allow the same in the following terms:-
 - a. That pending the hearing and determination of this suit, an injunction be and is hereby issued restraining the 1st Defendant/Respondent its servants, employees and agents by way of temporary injunction from trespassing, demolishing, selling alienating ore in any other way disposing of or dealing with parcel No. LR 209/7994/1 Dar Salaam pending the hearing and determination of this suit.
 - b. That the OCS Central Police Station to ensure compliance of this court orders.
 - c. The costs of this application be in the cause.
 - d. Parties to go for PTC before the DR on 24/07/2024.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH JULY 2024.

MOGENI J

JUDGE

In The Presence Of:

Mr. Omendi holding brief for Mrs. Kahindi for Applicant

Sagina Court Assistant

