



**Shambo v Shah (Environment & Land Case E140 of 2024)
[2024] KEELC 6668 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 6668 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E140 OF 2024**

MD MWANGI, J

JULY 9, 2024

BETWEEN

ALI ROBA SHAMBO PLAINTIFF

AND

RUKH KHAN SHAH DEFENDANT

(In respect of the Plaintiff's application dated 4th April, 2024 seeking amongst other orders an order restraining the Respondent from accessing, encroaching and invading the Plaintiff's parcel of land brought under the provisions of Order 51 of the Civil Procedure Rules, Section 1A, 1B, 3, 3A and 63 C and (E) of the Civil Procedure Act, Section 73 (1) of the Land Registration Act, and all other enabling provisions of the Law)

RULING

Background

1. The Plaintiff commenced this suit by way of a plaint dated 4th April, 2024. In the said plaint, the Plaintiff avers that he is the registered owner of L.R. No.209/103/7 (hereinafter referred to as the suit property). He alleges that sometimes in the year 2021, the Defendant encroached into the suit property thereby unlawfully interfering with his quiet possession and enjoyment. He particularized the illegalities committed by the Defendant at paragraph 6 of the plaint. He accused the Defendant of unlawfully trespassing into the suit property with the aim of dispossessing him of the suit property and refusing to vacate despite demand.
2. The Plaintiff prays for an order of permanent injunction and an order of eviction to be enforced by the OCS Parklands Police Station and costs of the suit.
3. In his witness statement accompanying the plaint, the Plaintiff states that the Defendant is a stranger while he is the registered owner of the suit property L.R.No.209/103/7 which he legally acquired through established processes of the Government of Kenya in the year 2004. He asserted that he was



even issued with a certificate of ownership under the Registration of Titles Act. He states that the Defendant encroached into the suit property without his consent with an intention of dispossessing him of the parcel of land.

Notice of Motion dated 4th April, 2024

4. Alongside the plaint, the Plaintiff filed the application under consideration seeking orders that;
 - a. Spent
 - b. That pending the hearing and determination of this suit, an order do issue restraining the Respondent, from accessing, encroaching and invading the land parcel L.R.No.209/103/7 which is registered in the name of ALIO ROBA SHAMBO.
 - c. A declaration that ALIO ROBA SHAMBO is the registered owner of that parcel of land L.R.NO.209/103/7.
 - d. That an order do issue permanently restraining the Respondent/Defendant from trespassing, accessing, encroaching and invading the land parcel number LR.NO.209/103/7.
 - e. That the OCS Parklands Police Station to assist in effecting the order.
 - f. That costs be in the cause.
5. The Plaintiff's application is premised on the grounds on the face of it and the supporting affidavit of the Plaintiff deposed on 4th April, 2024. The Plaintiff reiterates the averments in his plaint which have already enumerated above.

Courts' Directions.

6. The Court's directions were that the application be canvassed by way of written submissions. On 19th June, 2024, the Plaintiff was granted 3 days within which to file the submissions. The Plaintiff did not file the submissions within the timelines given. The Court therefore proceeded to consider the application without the submissions.

Issues for Determination.

7. The issues for determination in this matter is whether the orders sought by the Plaintiff in the application can be granted at this interim stage.

Analysis and Determination

8. I will be frugal with my words in this ruling considering that this is an interlocutory application and the suit is pending determination in order not to prejudice or embarrass the hearing of the main suit. Indeed, Ringera J (as he then was), in the case of Air land *Tours and Travel Ltd – vs – National Industrial Credit, Nairobi (Milimani) HCCC 1234 of 2002*, rightly stated that in an interlocutory application, the Court is not required to make any conclusive or definitive findings of fact or law.
9. In the old English case of Gilbert – vs – Eden (1878) 9 Ch.D, Cotton L.J, defined interlocutory applications as those applications;

“Which do not decide the rights of parties but are made for purposes of keeping things in status quo till the rights (of parties) can be decided or for purpose of obtaining some directions of the Court as to how the cause is to be conducted, as to what is to be done in



the progress of the cause for the purpose of enabling the Court ultimately to decide upon the rights of the parties.”

10. The question then for this Court to ask itself in considering the Plaintiff’s Notice of Motion application herein is whether the orders sought are intended to keep things in status quo till the rights of the parties are determined or whether the Plaintiff is seeking some directions of the Court as to how this case is to be conducted.
11. The first sustentative prayers though coached like a prayer for an interlocutory injunction if granted would amount to an eviction order. I say so because the Plaintiff has in his supporting affidavit and in his own pleadings clearly stated that the Defendant is in occupation of the suit property, albeit unlawfully. Granting an order restraining the Defendant from accessing, encroaching and invading the suit property then constructively amounts to evicting the Defendant from the suit property. An order of eviction is one of the orders the Plaintiff seeks in his plaint and which should only be issued after hearing of the case. I therefore decline to grant it at this interlocutory stage.
12. The other prayer that the Plaintiff seeks is a declaration that he is the registered owner of the suit property and an order of permanent injunction as well as an eviction order (under prayer No.4). These are the same orders that the Plaintiff has sought in his plaint. In essence the plaint is seeking a final determining of the suit through an interlocutory application.
13. Interlocutory applications as rightly stated in the above cited decisions cannot decide the rights of parties. The Court can only make final orders determining the rights of parties after a full hearing or upon an application for summary judgment, where applicable.
14. The Plaintiff’s application as framed is not only mischievous but amounts to an abuse of the process of Court. It is hereby dismissed in its entirety. The Court makes no orders as to costs since the application was not opposed.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF JULY 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

N/A by the Parties

Court Assistant: Yvette.

M.D. MWANGI

JUDGE

