



Sita & 413 others v Jipe Multi Purpose Co-operatvie Society Limited & 4 others (Environment & Land Case 7 of 2023) [2024] KEELC 5090 (KLR) (Environment and Land) (4 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5090 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE 7 OF 2023**

EK WABWOTO, J

JULY 4, 2024

BETWEEN

- JOSHUA MUEMA SITA 1ST PLAINTIFF**
- HARRISSON KISWII NYAMAI 2ND PLAINTIFF**
- CHRISTOPHER MUTETI KANYINGI 3RD PLAINTIFF**
- NGANANA KISHAPUA 4TH PLAINTIFF**
- EZEKIEL MUTRO LEMUJINI 5TH PLAINTIFF**
- JOSHUA TIPTIP SARUNI 6TH PLAINTIFF**
- JOSHUA MUTWOTA MATHEKA 7TH PLAINTIFF**
- ROBERT MUTUKU KYENDO 8TH PLAINTIFF**
- PETER MUTHEI KIMEU 9TH PLAINTIFF**
- JOSEPH LENGU KAYIAN SADERA & 404 OTHERS 10TH PLAINTIFF**

AND

- JIPE MULTI PURPOSE CO-OPERATVIE SOCIETY LIMITED 1ST DEFENDANT**
- DEPUTY COUNTY COMMISSIONER, TAITA TAVETA COUNTY 2ND DEFENDANT**
- OFFICER COMMANDING POLICE DIVISION, TAVETA 3RD DEFENDANT**
- REGISTRAR OF LANDS, MOMBASA 4TH DEFENDANT**
- THE HON ATTORNEY GENERAL 5TH DEFENDANT**



RULING

1. This ruling is in respect to the 1st defendant's application dated 4th of March 2024. In the said application, the 1st defendant seeks for injunctive orders against the Plaintiff in respects to property known as L.R No. 10287/3 (Original No. 7331 Grant I.R 17933) pending the hearing and determination of this suit.
2. The application was supported by an affidavit sworn by Kipesha Lawrent Mlondwa. It was averred that the Plaintiffs are continuing to trespass on the 1st defendant's land. The Plaintiffs are proceeding with the construction of various structures, including permanent buildings on the 1st defendant's land without permission or consent from the 1st defendant. It was also averred that the Plaintiffs are inviting other squatters and purporting to sell to them parts of the 1st defendants land. It was also averred that unless they are restrained by this court the 1st defendant may not have any land at the time of finalization and determination of the suit.
3. The said application was opposed by the Plaintiffs. In opposition to the same. The Plaintiffs filed a document titled "Replying affidavit" dated 29th of April, 2024. The said document was not sworn by any deponent. It was stated in the said document that the Plaintiffs were opposed to the grant of the orders sought for the reasons that the application was made in bad faith and should be dismissed with costs. It was also stated that the houses on the suit property were built by people whose their houses had fallen down during the period of the heavy rains experienced in the country. It was also stated that Kenya Red Cross, World Vision and other organisations had supported the Plaintiffs in building the said houses.
4. Pursuant to the directions issued by the court it was directed that the application be canvassed by way of written submissions. However, as per the record, none of the parties had filed any written submissions as at the time the court retired to write its ruling. That notwithstanding the court has considered the application, the pleadings and the evidence on record and has outlined the following issues for determination;
 - i. Whether the Plaintiffs "Replying Affidavit" is defective.
 - ii. Whether the 1st Defendant has met the threshold for grant of the orders sought.
5. Order 51 Rule 14 of the Civil Procedure Rules stipulates that a Respondent who wishes to oppose an application may file either a notice of preliminary objection, replying affidavit or statement of grounds of opposition.
6. Order 19 Rule 4 of the Civil Procedure Rules stipulates that every affidavit shall state the description, true place of abode and postal address of the deponent. While this court is alive to the fact that courts may not reject any affidavit on the irregularity of its form, the affidavit filed herein does not indicate its deponent and hence remains defective. It is therefore not a proper affidavit for consideration by this court and as such it is hereby struck out. It doesn't matter whether it was filed by a party acting in person. But at the very least a replying affidavit ought be in the proper context as per the provisions of the law.
7. In respect to the injunctive orders sought pending the hearing and determination of the suit, the principles upon which this court exercises its discretion in applications for a temporary injunction are now well settled. In *Giella v Cassman Brown & Co. Ltd.* [1973] E.A 358, it was held that an applicant for a temporary injunction must show a prima facie case with a probability of success and



such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not be adequately compensated by an award of damages. It was held further that if the court is in doubt as to the foregoing, the application would be determined on a balance of convenience. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR the Court of Appeal adopted the definition of a prima facie case that was given in the case of *Mrao Limited v First American Bank of Kenya Limited & 2 Others* [2003] KLR 125 and went further to state as follows:

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. ...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 threatened with violation...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.”

8. In the instant case the court has noted that the Plaintiffs are in occupation of the suit property and have been undertaking some activities in relation to the same. Having considered the application together with the competition interests of the parties herein, it is indeed necessary for the parties to preserve the suit property since the court is seized with the matter.
9. In view of the foregoing, the 1st Defendant’s application dated 4th March 2024 is hereby disposed of as follows;
 - a. That pending the hearing and determination of this suit the Plaintiffs herein either by themselves, agents or employees are hereby restrained from undertaking any new and further construction on the suit property known as L.R No. 10287/3 (Original No. 7331/Grant I.R 17933)
 - b. There shall be no eviction of any party currently in occupation of the suit property as at the time of delivery of this ruling pending the hearing and determination of this suit.
 - c. Each party to bear own costs of the application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 4TH DAY OF JULY 2024.

E. K. WABWOTO

JUDGE

In the presence of:-

Joshua Muema Sita 1st Plaintiff acting in person.

Christopher Muteti Kanyingi 3rd Plaintiff acting in person.

Ezekiel Mutro Lemujini 5th Plaintiff acting in person.

Robert Mutuko Kyendo 7th Plaintiff acting in person.

Joseph Lengu Kayian 10th Plaintiff acting in person



Mr. Kiarie Kariuki for 1st Defendant.

Mr. Makuto for the 2nd to 5th Defendants.

Court Assistants: Mary Ngoira and Norah Chao.

