



**Kibui v Kamunyu (Environment & Land Case E291 of 2024)
[2024] KEELC 6588 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6588 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E291 OF 2024**

**LN MBUGUA, J
OCTOBER 3, 2024**

BETWEEN

JAMES KAMANJA KIBUI PLAINTIFF

AND

JAMES KURIA KAMUNYU DEFENDANT

RULING

1. Before me is the plaintiff's application dated 16.7.2024 seeking temporary orders of injunction restraining the defendant/respondent whether by himself his legal representatives, agents and/or servants howsoever trespassing, wasting, constructing on, further construction, or otherwise interfering or dealing or in any manner interfering with the parcel of land Plot No. 7 and 8 being subdivision of parcel of land No. LR 8345/6 of the Roysambu Housing Co-operative Society Ltd at Zimmermann Estate, Kasarani within Nairobi County along Thika Superhighway.
2. The plaintiff contends that he is a member of Roysambu Housing Co-Operative-Society, where he was allocated plots numbers 7 and 8 in 1993. That since then, he has been in actual occupation of the suit plots which he fenced and he also put up a container.
3. That on 15.6.2022, the defendant descended on the suit property with goons, demolished the fence and carted away plaintiff's container. He contends that there is a need to protect the plaintiff's legitimate and beneficial interests in the suit property.
4. The defendant was served but no response was filed, hence the application is unopposed. Should the court then proceed to allow the application? In the supreme court case of Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 Others [2018] eKLR, it was stated that;

“As a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a



matter of cause grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.

5. Guided by the above mentioned holding, the court will proceed to interrogate the merits of the application at hand. The applicant contends that he had been in possession of his plots from the time of allocation in 1993, whereby he had fenced the land and he had put up a fence round the property, but the fence was destroyed by the defendant on 15.6.2022 and the container was carted away. However, these averments set out in the application are not in tandem with the pleadings. At paragraph 5 and 6 of the plaint, the applicant contends that it was year 2019 when he found the fence demolished, the container missing and that defendant was constructing on plot 8 and he therefore prays for interalia damages including mesne profits, and that the defendant be ordered to remove the structures erected on the suit plots.
6. It is quite apparent that granting the orders sought at this stage would be tantamount to granting major reliefs before the trial. In the case of Daniel Atibu Jasimba v Ainea Sandanyi Magana [2013] eKLR, the court had this to say in respect of a prayer relating to a major relief;

“Since the Plaintiff’s suit is for eviction of the defendant from the said residence, such an injunction will amount to granting a major relief in the suit without the benefit of a hearing”.

7. Similarly, in the matter at hand, the prayers sought are not tenable as they amount to issuance of major reliefs sought in the plaint. Further, there is no plausible explanation given as to why the particulars of the claim as set out in the application are inconsistent with the ones in the plaint with regard as to when the invasions occurred. In the circumstances, the application is found to be unmerited, the same is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Wanjiku holding brief for Mugo for Plaintiff

Court Assistant: Joan

