



**Losokwan Camp Limited v Maasai Mara Landowners Conservancy Limited & another
(Environment & Land Case E013 of 2024) [2024] KEELC 6593 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6593 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E013 OF 2024
CG MBOGO, J
OCTOBER 9, 2024**

BETWEEN

LOSOKWAN CAMP LIMITED PLAINTIFF

AND

MAASAI MARA LANDOWNERS CONSERVANCY LIMITED DEFENDANT

AND

OLD BOMA LIMITED RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated 21st June, 2024 filed by the plaintiff/ applicant, and it is expressed to be brought under Sections 1,1A,1B, 3, 3A & 63 (c) and (e) of the [Civil Procedure Act](#), Sections 13 and 19(2) of the Environment & Land Court Act, and Order 40 Rules 1(a), 2a & 10 (b) of the Civil Procedure Rules seeking the following orders: -
 1. Spent.
 2. A temporary injunction do issue, pending the hearing and determination of this motion, restraining the defendants/ respondents by themselves, their servants, agents, guards or otherwise howsoever from interfering with the plaintiff's use of the parcel of Cis-Mara/ Lemek/6541 in its tourism business thereon, and or the plaintiff's lawful usage of all the public access roads in the Lemek conservancy area and the plaintiff's free ingress and egress thereto, via the crossing points known and identified as the Elephant/ Naserian Barrier, Losokwan Barrier, Ndagurugurieti Barrier, and the airstrip Mara River Barrier, and/or any other crossing points within Lemek Conservancy area, Narok County.
 3. A temporary injunction do issue, pending the hearing and determination of the suit herein, restraining the defendants/ respondents by themselves, their servants, agents, guards or



otherwise howsoever from interfering with the plaintiff's use of the parcel of Cis-Mara/Lemek/ 6541 in its tourism business thereon, and or the plaintiffs' lawful usage of all the public access roads in the Lemek conservancy area and the plaintiff's free ingress and egress thereto, via the crossing points known and identified as the Elephant/ Naserian Barrier, Losokwan Barrier, Ndagurugurieti Barrier, and the airstrip Mara River Barrier, and/or any other crossing points within Lemek Conservancy area, Narok County.

4. The orders herein issued be enforced by and/or the supervision of the Officer Commanding Police Division (OCPD) Mulot, Narok County.
5. The costs of this motion be to the applicant in any event.
2. The application is premised on the grounds inter alia that the plaintiff/ applicant operates its business on parcel of land known as Cis-Mara/Lemek/6541 within Lemek Conservancy. The application is supported by the affidavit of the Gichohi Mwaniki, the director of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that as at the time the lodge was erected in the year 2007, it has always used the public roads to access its premises including the crossing points known as Elephant/ Naserian barrier, Losokwan barrier, Ndagurugurieti barrier and the Airstrip Mara river. Further, he deposed that the plaintiff/ applicant has been utilising the public access roads which were at all times accessible to all and, which has never entailed acquisition of any permission from the defendants/ respondents to cross the said points.
3. The plaintiff/ applicant deposed that the roads are public and it has been acknowledged by all the land owners within Maasai Mara Lemek Conservancy. Further, that the defendants/ respondents have only come to the conservancy recently, hindering its business by blocking the plaintiff's/ applicant's access to its property and business. It was also deposed that despite a complaint made to Mulot Police station under OB Number 30/12/06/2024 of the harassment by the defendants/ respondents' agents and militia, the defendants/ respondents have continued with the unreasonable blockage of the roads.
4. The plaintiff/ applicant further deposed that the defendants/ respondents have relentlessly sought to compel it to forcibly join the 1st defendant/ respondent which the plaintiff/applicant has declined and refused as it enjoys the constitutional rights of freedom of association enshrined under Article 36 of *the Constitution*. Further, that the defendants/ respondents do not have any ownership rights, control of possessory title to the public access roads, and the specific barrier points within Lemek Conservancy. It was deposed that the defendants/ respondents attempted to steal a match on the plaintiff/ applicant using the exparte orders obtained in Narok ELC JR No. E002 of 2024; Republic versus Director General, National Environmental Management Authority & Others, ex parte Maasai Mara Lemek Landowners Conservancy Limited & Old Boma Limited) to block them from accessing its own lodge, in breach of its rights in law.
5. The plaintiff/ applicant went to depose that the 1st defendant/ respondent has in the two suits i.e. Narok ELC JR No. E002 of 2024, and Narok ELC Case No. E010 of 2024 concealed before this court the fact that it does not have any lease over the plaintiff's/ applicant's property, and hence has no rights in law to control its tourism business operated on the property. Further, that the defendants/ respondents have in the past unsuccessfully attempted to coerce the plaintiff/ applicant into joining the 1st defendant's/ respondent's conservancy without success and the said actions are borne out of malice. Further, it was deposed that the reputational damage arising is irreparable and the resulting loss are aggravated.
6. The application was opposed by the replying affidavit of Jeremiah Mutisya, the Chief Executive Officer of the 2nd defendant/ respondent sworn on 3rd July, 2024. The 2nd defendant/ respondent deposed



- that the 1st defendant/ respondent is a company formed by land owners with plots of land registered closely knit, forming a wildlife conservancy, and the 2nd defendant/ respondent manages the tourism investment of the conservancy through an agreement with the 1st defendant/ respondent. The 2nd defendant/ respondent deposed that the access roads are not public roads but private roads, since they are on private property to make it easier for the tourists to access the remote parts of the conservancy to view wildlife.
7. The 2nd defendant/ respondent further deposed that barriers have been erected on the roads as the land is private, and that it is also responsible for the wildlife in the conservancy, to obviate threats of poaching. It was deposed that such road blocks must be erected to enable it be in a position to account for movement of vehicles during the game drive, and stop any unwanted visitors as they are answerable to the Kenya Wildlife Service and the County Government of Narok. The 2nd defendant/ respondent deposed that the plaintiff/ applicant's property happens to be in the 1st defendant's/ respondent's wider conservancy though not leased to the defendants/ respondents which has public access roads which is in the cadastral map.
 8. That contrary to the 2nd defendant's/ respondent's road, which is in cadastral map, the plaintiff/ applicant is asking the court to allow it to use a road which is not in the cadastral map. It was deposed that the plaintiff/ applicant has no rights to use by force the said access roads, to the extent of destroying the erected road blocks. That in granting the orders sought, the same amounts to interference with the 1st defendant's/ respondent's right to property and the right to use the land as a lessee. He deposed that the plaintiff's/ applicant's act amounts to trespass.
 9. The 1st defendant/ respondent filed its replying affidavit through its Secretary, Sankale Ole Nabaala, which was sworn on 3rd July, 2024. The deposition contained in the 1st defendant's / respondent's affidavit are similar to the 2nd defendant's/ respondent's sworn affidavit. There is no need of rehashing its contents save to state that the same is noted.
 10. The plaintiff/ applicant filed its supplementary affidavit sworn on 8th July, 2024 by its Chief Executive Officer, Gichohi Mwaniki. While reiterating the contents of its supporting affidavit, the plaintiff/ applicant deposed that there are no leases duly registered to support the allegation that the 1st defendant/ respondent has leased properties from the land owners. Further, that there is no list of the alleged landowners, and that there is no green card of the alleged parcels leased from land owners to comprise its conservancy. Further, it was deposed that the mere display of drawing alleged to be a map without any cadastral delineations or any surveyor's marking is of no probative or evidential value at all, and does not qualify as a legal document.
 11. The plaintiff/ applicant further deposed that there is no pleading by the 1st defendant/ respondent that it had met the legal antecedents of such leasing of parcels of land that require the relevant consent of the Land Control Board. Further, that the land management agreement dated 20th July, 2022 has no execution in proof, and thus has no evidential value. The plaintiff/ applicant deposed that the evidence the roads have been accessible since the lodge was constructed in the year 2007 has not been rebutted, and there is no specific property where it is alleged that the plaintiff/ applicant has trespassed. Further, that were the said roads private roads, there would be no tourism game drives in the conservancy, even during the subdivision of Lemek Group Ranch.
 12. The application was canvassed by way of written submissions. The plaintiff/ applicant filed its written submissions dated 15th July, 2024 where it raised two issues for determination as listed below: -
 - a. Whether on the material before the court, the plaintiff is entitled to an order of injunction as sought in the motion dated 21st June, 2024.



- b. Who should bear the cost of the motion.
13. On the first issue, the plaintiff/ applicant submitted that neither of the defendants deny using unlawful militia to threaten, victimise and assault its employees who are using the public roads within Lemek area, when the defendants have no right to do so. They submitted that they have established a prima facie case as it was held in the cases of Mrao Ltd versus First American Bank of Kenya Ltd & 2 Others [2003] KLR 125, Mistry Amara Singh versus Serwano Wofunira Kulubya (1963) EA 408 and Nguruman Limited versus Jan Bonde Nielsen & 2 Others [2014] eKLR.
 14. The plaintiff/ applicant further submitted that the reputational damage to its business is irreparable, and that it is entitled to the unhindered lawful usage of the public access roads in the Lemek Conservancy area. Reliance was placed in the case of Pius Kipchirchir Kogo versus Frank Kimeli Tenai [2018] eKLR.
 15. In conclusion, the plaintiff/ applicant submitted that Article 40 of *the Constitution* guarantees the property rights of every person, and this court is entitled to intervene as sought in the circumstances of this case.
 16. The defendants/ respondents filed their written submissions dated 22nd July, 2024 where they raised two issues for determination as follows: -
 - i. Whether this court can order the defendants/ respondents to open or allow the plaintiff/ applicant to freely use the defendants/ respondents private land.
 - ii. Whether the plaintiff/ applicant has met the conditions of a grant of interlocutory injunctions as set out in the famous case of Giella versus Cassman Brown & Company.
 17. On the first issue, the defendants/ respondents submitted that the plaintiff/ applicant has no right to freely use the private access roads curved out in the plots of land forming the conservancy, and that in the absence of any consent from the defendants/ respondents, the same would amount to trespass on their private property in violation of Article 40 on the right to property.
 18. On the second issue, the defendants/ respondents submitted that this being a case involving denial of what the plaintiff/ applicant claims to be public road, it was its duty to provide a cadastral map showing where the same is located and the roads denied. Further, that there is no cadastral map supporting their allegation, and for this reason, there is no prima facie case against the defendant. The defendants/ respondents further submitted that it is not responsible for the loss incurred, as the plaintiff/ applicant should have sought for the necessary consents from the proprietors of private land who have offered a portion of their property for access roads. Further, they submitted that a cadastral map or a photograph of a barrier is a material that on the face of it, would show that the plaintiff/ applicant has a prima facie case, and there is no evidence that the defendants/ respondents have interfered with the plaintiff/ applicant use and occupation of its property. They submitted that the plaintiff/ applicant has not met the threshold for the grant of the orders sought.
 19. I have considered the application, the replies thereof and the written submissions filed by both parties. In my view the issue for determination is whether the plaintiffs/ applicants are entitled to the orders of temporary injunction.
 20. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the case of Giella versus Cassman Brown (1973) EA 358. This position has been reiterated in numerous



decisions from our courts and more particularly in the case of Nguruman Limited versus Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“In an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially.”

21. On whether the plaintiff/ applicant has established a prima facie case, it is not disputed that the plaintiff/ applicant has been in operation of its business premises-Losokwan Camp Limited situated within Lemek Conservancy area since setting up the same in the year 2007 or thereabout. According to the plaintiff/ applicant they have been using the public access roads including the crossing points at Elephant/Naserian barrier, Losokwan barrier, Ndagurugurieti barrier and the airstrip Mara river in the conduct of its tourism business. The plaintiff/applicant contended that the defendants/ respondents have erected barriers on the roads now referring them to private roads, and further, they have unsuccessfully sought them to join the 1st defendant/respondent which it has declined and refused. The plaintiff decried use of armed militia to intimidate and harass its employees, resulting in cancellation and relocation of its tourists.
22. In their response and submissions, the defendants/ respondents maintained that the said roads are private roads curved out of individual parcels of land to enable access of the conservancy by the tourists, and as such the plaintiff/ applicant has invaded their property. Having analysed the application and affidavits on record, the evidence and the written submissions of the parties, I am satisfied that the plaintiff/ applicant has established a prima facie case, to the extent that their duration of occupation of the suit property within Lemek conservancy has not been challenged, and that the defendants/ respondents operations of business whether lawful or otherwise may have commenced not long ago. This is a fact agreed upon by the defendants/ respondents. In Mrao Limited versus First American Bank of Kenya Limited [2003] eKLR, the court stated as follows: -

“... 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 legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

23. Also, in the case of Dr. Simon Waiharo Chege vs. Paramount Bank of Kenya Ltd. Nairobi (Milimani) HCCC No. 360 of 2001: it was held,

“The remedy of injunction is one of the greatest equitable relief. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the applicant is normally required to show that damages would not be an adequate remedy for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As



the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as appertains to the subject matter of the suit does not meet the approval of the eye of equity.”

24. Secondly, the plaintiff/ applicant needed to demonstrate irreparable harm that cannot be compensated by damages. In the case of Pius Kipchirchir Kogo versus Frank Kimeli Tenai [2018] eKLR, irreparable injury was described as follows: -

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

25. On this issue, the plaintiff/ applicant argued the occurrence of reputational damage resulting to losses. On this, they argued that owing to the barriers, the plaintiff/ applicant has had to cancel bookings and relocate its tourists to Mara Bella Camp. The defendants/ respondents distanced itself from the loss incurred by the plaintiff/ applicant. They submitted that the plaintiff/ applicant should have sought for the necessary consents from the proprietors of the private land. Interestingly and I note is that the defendants/ respondents did not deny any acts of intimidation and harassment of the plaintiff’s/ applicant’s employees. On this issue, and in my view, there is threat to the utilization of the suit properties which to a great extent demonstrates irreparable loss on the part of the plaintiff/ applicant.

26. In sum, the balance of convenience lies in favour of the plaintiff/ applicant as the inconvenience caused will be greater if the orders are not granted in its favour as opposed to the defendants/ respondents.

27. I find merit in the notice of motion dated 21st June, 2024, and I proceed to issue the following orders: -

- i. A temporary injunction is hereby issued, pending the hearing and determination of the suit herein, restraining the defendants/ respondents by themselves, their servants, agents, guards or otherwise howsoever from interfering with the plaintiff’s use of the parcel of Cis-Mara/ Lemek/ 6541 in its tourism business thereon, and or the plaintiffs’/ applicant’s lawful usage of all the public access roads in the Lemek conservancy area and the plaintiff’s free ingress and egress thereto, via the crossing points known and identified as the Elephant/ Naserian Barrier, Losokwan Barrier, Ndagurugurieti Barrier, and the airstrip Mara River Barrier, and/or any other crossing points within Lemek Conservancy area, Narok County.
- ii. The orders herein issued be enforced by and/or the supervision of the Officer Commanding Police Division (OCPD) Mulot, Narok County.
- iii. Costs in the cause.

Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 9TH DAY OF OCTOBER, 2024.

HON. MBOGO C.G.

JUDGE

09/10/2024

In the presence of; -

Mr. Meyoki Pere – C. A

