



Rai v Principal Secretary, Ministry of Interior and Co-ordination of National Government & 5 others (Land Case 1 of 2024) [2024] KEELC 6563 (KLR) (8 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6563 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
LAND CASE 1 OF 2024
BO ODHIAMBO, J
OCTOBER 8, 2024**

BETWEEN

TEJVEER SINGH RAI PLAINTIFF

AND

THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT 1ST DEFENDANT

REGIONAL COMMISSIONER, WESTERN REGION 2ND DEFENDANT

THE LAND REGISTRAR KAKAMEGA COUNTY 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

THE KENYA POWER & LIGHTING COMPANY 5TH DEFENDANT

THE PRINCIPAL SECRETARY, STATE DEPARTMENT FOR PUBLIC WORKS 6TH DEFENDANT

RULING

1 The Plaintiff brought this suit against the Defendants at the ELC Kakamega by way of a plaint dated 24th November 2023. The suit was transferred to this court on 18th December 2023. In the plaint, the Plaintiff averred that he was the registered owner of all those properties known as Kakamega/ Municipality Block III/213,214 and 219 (hereinafter referred to as “the suit properties”).The Plaintiff averred that he purchased the suit properties from one, Rena Sunil Patel sometimes in March 2010.The Plaintiff averred that by virtue of Article 40 of *the Constitution* of Kenya as read together with Section 2 of the *Land Act*, 2012 he was entitled to quiet possession and user of the suit properties. The Plaintiff averred that in 2019, Ethics and Anti-Corruption Commission acting on behalf of the Defendants brought suits against him among other persons seeking to cancel the titles of the suit properties which suits were dismissed on 15th September 2021.



- 2 The Plaintiff averred on 31st August 2023, the 2nd Defendant wrote to the previous registered owner of the suit properties requesting for his title documents for the purpose of verification. The Plaintiff averred that thereafter the Defendants proceeded to erect a notice on the suit properties to the effect that the suit properties were government land. The Plaintiff averred that on 24th November 2023 at 5am without notice to the Plaintiff, the Defendants agents under the protection of police officers brought a bulldozer to demolish the Plaintiff's houses on the suit properties an exercise which the Defendants abandoned after the public intervened. The Plaintiff averred that on the same day in the afternoon, the 5th Defendant's employees came and disconnected electricity from the suit properties without notice claiming that they had been instructed by the 2nd Defendant to do so as the buildings on the suit properties were to be demolished.
- 3 The Plaintiff averred that the illegal disconnection of electric power supply to the suit properties was meant to frustrate the Plaintiff to make him move out of his family house and/or assist the Defendants in demolishing the suit property under the cover of darkness. The Plaintiff averred that he was apprehensive that the Defendants would move to evict him from the suit properties and demolish the houses on the same.
- 4 The Plaintiff averred that the Defendants had no proprietary interest recognised by law in the suit properties. The Plaintiff averred that he was likely to suffer irreparable loss and damage if immediate action was not taken against the Defendants. The Plaintiff averred that the suit properties had been in private hands for the last 30 years and that, before he purchased the same, he carried out due diligence and relied on the records and information from the lands office which confirmed that the titles of the suit properties were genuine.
- 5 The Plaintiff sought judgment against the Defendants jointly and severally for; a declaration that the notice placed by the Defendants on the Plaintiff's properties claiming that the suit properties were government land was unprocedural and as such illegal, an order of permanent injunction restraining the Defendants whether by themselves, their employees, proxies, servants or any other person acting under their authority/direction from demolishing the buildings on the suit properties; an order of a mandatory injunction compelling the 5th Defendant to unconditionally reconnect and restore electric power supply to the suit properties, general damages, and costs of the suit.
- 6 Together with the plaint, the Plaintiff brought an application by way of a Notice of Motion dated 24th November 2023 under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Order 40 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules 2010. In the application, the Plaintiff sought the following orders;
 1. Spent.
 2. Spent.
 3. Spent.
 4. This Honourable court be pleased to grant a temporary order of injunction against the Defendants, their agents, assigns, servants, employees or anyone claiming under them from trespassing into the suit properties and/or interfering with the same in any manner whatsoever pending the hearing and determination of this suit.
 5. This Honourable Court be pleased to grant an order of a mandatory injunction compelling the 5th Defendant to reconnect electric power to the suit properties pending the hearing and determination of this suit.



6. The costs of the application be borne by the Defendants.
7. The Application was based on the grounds on the face thereof and on the affidavit and further affidavit of the Plaintiff sworn on 24th November 2023 and 13th December 2023 respectively. The Plaintiff reiterated that he was the bonafide registered owner of the suit properties which he acquired for valuable consideration. The Plaintiff reiterated that the 1st and 2nd Defendants had placed a notice on the suit properties claiming that the same was government land. The Plaintiff averred that the said notice was irregular as the suit properties were private the same having been leased to the Plaintiff by the County Government of Kakamega and not by the Government of Kenya. The Plaintiff reiterated that the Defendants came to the suit properties in the morning on 24th November 2023 at around 5 am to demolish the buildings thereon but left after they met resistance from the public. The Plaintiff reiterated that on the same day in the afternoon, the 5th Defendant without notice disconnected electric power from the Plaintiff's house on the suit properties on the instruction of the other Defendants. The Plaintiff averred that the electric power disconnection was illegal as there was no outstanding debt payable to the 5th Defendant neither had the Plaintiff contravened any law regarding the power supply to warrant the disconnection.
8. The Plaintiff averred that the Defendants' actions complained of were driven by malice and were meant to frustrate and embarrass the Plaintiff and his family by alleging that their wealth was ill gotten despite the fact that the Plaintiff was one of the largest employers in Western Kenya operating 4 sugar factories. The Plaintiff averred that unless the interim orders sought were granted as prayed, the Defendants were likely to abuse their powers courtesy of the positions they held and interfere with the Plaintiff's occupation and possession of the suit properties. The Plaintiff averred that the application was brought without unreasonable delay and that it was in the interest of justice that the orders sought be granted. The Plaintiff annexed several documents to his affidavits in support of the averments contained therein.
9. The application was withdrawn as against the 5th Defendant on 6th December 2023. The same was opposed by the 1st, 2nd, 3rd, 4th and 6th Defendants (hereinafter together referred to only as "the Defendants") through a replying affidavit sworn by Samson Macharia on 29th November 2023. Samson Macharia averred that he was the 2nd Defendant in the suit and that he was the coordinator of the national government in the western region. The Defendants averred that the suit properties were government land and had been reserved for housing. The Defendants averred that the suit properties had already been alienated and as such the same were not available for alienation by the Kakamega Municipality or the Commissioner of Lands. The Defendants averred that the purported allocation of the suit properties which had always been having government houses was illegal. The Defendants averred that the Plaintiff was among the few wealthy individuals who used their influence to obtain public land at the expense of the ordinary Kenyans.
10. The Defendants averred that Article 40 of *the Constitution* does not protect individuals who have illegally acquired land meant for public use. The Defendants urged the court to dismiss the Plaintiff's application and to vacate the interim orders that had been granted. The Defendants contended that when the suit properties were purportedly allocated, the norm was to identify a compound which had a government house, hive off a portion thereof and name it as unsurveyed land after which the fraudsters would commence the processing leases. The Defendants averred that the suit properties were within the parcel of land known as Kakamega Municipality/Block III/282 which hosted Kakamega Central Police station, Regional Commissioner's office, Kakamega County Commissioner's office, national government offices and civil servants houses among other security installations. The Defendants averred that they had a right to erect a signage board to warn unsuspecting Kenyans that the area was public land.



- 11 The Application was argued by way of written submissions. The Plaintiff filed submissions on 15th December 2023 while the Defendants did not file submissions. The Plaintiff submitted that the Defendants placed no evidence before the court in support of their contention that the suit properties were government land and that the same were illegally acquired by the Plaintiff and the persons from whom he purchased the same. The Plaintiff submitted that even if the suit properties were government land which was denied, eviction therefrom could only be undertaken by the National Land Commission and not by the 2nd Defendant. The Plaintiff submitted that he had satisfied the conditions for granting a temporary injunction. The Plaintiff submitted that he had established a prima facie case against the Defendants with very high chances of success. The Plaintiff submitted that he had been in possession and occupation of the suit properties and although the houses on the properties had been demolished by the Defendants, the suit properties were yet to be occupied by the Defendants who only trespassed thereon and left after demolishing the said houses. The Plaintiff submitted that the suit properties were still intact and in the hands of the Plaintiff. The Plaintiff submitted that he wanted to secure the premises since they were left open and exposed to looting and other forms of damage after the demolition.
- 12 The Plaintiff submitted that the suit properties were valued at hundreds of millions of Kenya shillings and there was no indication that the Government of Kenya would be willing to pay any damages suffered by the Plaintiff. The Plaintiff submitted that even if the Plaintiff were to be awarded damages, it was in the public domain that it was almost impossible for the government to settle an award of damages made against it. The Plaintiff submitted that the loss suffered by the Plaintiff could not therefore be compensated by an award in damages.
- 13 The Plaintiff submitted that even if the court were to consider the balance of convenience, the same tilted in favour of granting the injunction. The Plaintiff submitted that the Government was capable of acquiring an alternative land rather than employing crude means to illegally dispossess the Plaintiff of his land. The Plaintiff submitted that he had established that he was entitled to the orders sought in the application.

Analysis and determination

- 14 I have considered the Plaintiff's application together with the affidavits filed in support thereof. I have also considered the Defendant's affidavit in reply to the application and the submissions filed by the Plaintiff.
- 15 The principles applied by the court in applications for interlocutory injunction are 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.
- 16 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 *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.”

17 I am persuaded that the Plaintiff has established a prima facie case against the Defendants with a probability of success. The Plaintiff has established that he is the registered proprietor of the suit properties. The Plaintiff has also produced evidence showing that the suit properties are developed and that he is the one in occupation of the same. The Defendants have on the other hand claimed that the suit properties were illegally excised from a parcel owned by the Government known as Kakamega Municipality/Block III/282 which was initially set aside for recreational activities. The Defendants placed no evidence before the court in proof of their allegations that the suit properties were excised from the said parcel of land and that the said parcel of land, Kakamega Municipality/Block III/282 was an alienated government land. I am satisfied that the Plaintiff has established on a prima facie basis that he is the lawful owner of the suit properties and that the Defendants have without any lawful cause entered the suit properties and demolished the buildings that were thereon.

18 It is common ground that the demolition that the Plaintiff wanted to stop took place while this application was pending. The Plaintiff is however still the owner of the now undeveloped land that remained after the demolition. The Plaintiff still has a right to possession of that land. I am convinced that the Plaintiff stands to suffer irreparable harm which cannot be compensated in damages if the injunction sought is not granted. Having demolished the Plaintiff's buildings on the suit properties, the Defendants' next move is uncertain. There is a risk that the suit properties may be put beyond the reach of the Plaintiff. If this happens, the loss to the Plaintiff would be irreparable.

Conclusion

19 In conclusion, I find merit in the Notice of Motion application dated 24th November 2023. The application is allowed in terms of prayers 4 and 6 thereof against the 1st, 2nd, 3rd, 4th and 6th Defendants only.

DELIVERED AND DATED AT KISUMU ON THIS 8TH DAY OF OCTOBER 2024

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

N/A for the Plaintiff

N/A for the 1st, 2nd, 3rd, 4th and 6th Defendants

N/A for the 5th Defendant

Ms. J.Omondi-Court Assistant

