



REPUBLIC OF KENYA



**Sitienei v Maina & 3 others (Environment & Land Case E021 of 2023)  
[2024] KEELC 14193 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 14193 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E021 OF 2023  
JM ONYANGO, J  
NOVEMBER 5, 2024**

**BETWEEN**

**EMMANUEL KIPROTICH SITIENEI ..... PLAINTIFF**

**AND**

**TIMOTH KAMAU MAINA ..... 1<sup>ST</sup> DEFENDANT**

**HILLARY KIPCHUMBA ..... 2<sup>ND</sup> DEFENDANT**

**RAYMOND KIPROP NG'ENO ..... 3<sup>RD</sup> DEFENDANT**

**MICHAEL CHERUIYOT CHESUM ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion dated 5<sup>th</sup> August 2024 the Plaintiff/ Applicant filed an application seeking the following orders:
  - a. Spent.
  - b. That this Honourable Court be pleased to issue a temporary injunction against the Defendants herein, their agents and/or any person authorized to act for them in any capacity from entering, collecting rent, trespassing evicting, selling, charging, disposing of or in any manner dealing with the property described as LR 6482/5 pending the inter partes hearing of this application.
  - c. That this Honourable Court be pleased to issue a temporary injunction against the Defendants herein, their agents and/or any person authorized to act for them in any capacity from entering, collecting rent, trespassing evicting, selling, charging, disposing of or in any manner dealing with the property described as LR 6482/5 pending the hearing and determination of this application.



- d. That this Honourable Court be pleased to issue a temporary injunction against the Defendants herein, their agents and/or any person authorized to act for them in any capacity from entering, collecting rent, trespassing evicting, selling, charging, disposing of or in any manner dealing with the property described as LR 6482/5 pending the hearing and determination of this suit.
  - e. That the costs of the application be borne jointly by the Defendants.
2. The application is based on the eleven ground set out on the face of the Notice of Motion and the Applicant's Supporting affidavit.
  3. In the said affidavit he deposes that he is the registered owner of the land parcel known as L.R No. 6482/5. He further deposes that that Defendants have illegally encroached on his parcel of land and are in the process of developing the same to his detriment. That the defendants have created the false impression that he entered into sale agreements with them for the sale of a portion of his land which is not true.
  4. He adds that the defendants are plotting to fraudulently deprive him of his right to quiet enjoyment of his property and they ought to be restrained from further dealing with the suit property. It is his contention that the defendants have no lawful claim to his property.
  5. When the application came up for inter partes hearing on 14.10.24, counsel for the Plaintiff informed the court that he had served the defendant with the application but they had not filed any Replying affidavit. The court reserved the ruling in order to consider the application on its merits.
  6. The only issue for determination is whether the application for injunction ought to be granted.
  7. The principles for the grant of a temporary injunction were injunction set out in the case of *Giella V Cassman Brown & Company Ltd* 1973 EA 358 as follows:

“First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”
  8. In the case of *Mrao V First American Bank of Kenya Limited* (2003) eKLR Bosire JA (as he then was) stated as follows:

“A prima facie case is one which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”
  9. I have considered the plaintiff's application together with the supporting affidavit. I note that the plaintiff has annexed a title deed and photographs indicating that the defendants have put up structures on the suit property. The title deed however bears the names of Kipkemei Arap Surtan, Malakwen Arap Lagat, Kibitok Arap Murei, Kibor Arap Korir, Kibor Arap Busienei and Kibitok Arap Sang as tenants in common in equal shares. The assumption is that the Plaintiff derives his title from one of the above-named registered owners but that will only become clear during the hearing.
  10. At this preliminary stage, the court is concerned with preserving the subject matter before the hearing of the main suit. Consequently, and in line with the Practice Directions on Proceedings in the Environment and Land Court, Gazette Notice No. 5178 of 2014, I am of the view that it is in the



interest of justice that the status quo obtaining as at 5<sup>th</sup> November 2024 be maintained pending the hearing and determination of the main suit.

11. I make no order as to costs.

**DATED SIGNED AND DELIVERED AT ELDORET THIS 5<sup>TH</sup> DAY OF NOVEMBER 2024.**

**J.M ONYANGO**

**JUDGE**

In the presence of;

No appearance for the parties

Court Assistant: Donna

