



REPUBLIC OF KENYA



**Kangaya & another v Sinbokas Machinery Limited & 6 others (Environment & Land Case E008 of 2023) [2023] KEELC 18613 (KLR) (5 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18613 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E008 OF 2023**

**MN MWANYALE, J**

**JULY 5, 2023**

**BETWEEN**

**LAWRENCE ISINDU KANGAYA ..... 1<sup>ST</sup> PLAINTIFF**

**JULIANA JEBET ISINDU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SINBOKAS MACHINERY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MARY MBUGUA ..... 2<sup>ND</sup> DEFENDANT**

**ROBERT OLEITEREM ..... 3<sup>RD</sup> DEFENDANT**

**CHARLES MALAKWEN ..... 4<sup>TH</sup> DEFENDANT**

**NANDI COUNTY GOVERNMENT ..... 5<sup>TH</sup> DEFENDANT**

**THE LAND REGISTRAR NANDI COUNTY ..... 6<sup>TH</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling relates to a Notice of Motion dated 22<sup>nd</sup> March 2023 brought under Section 1A, 3 and 3A of the *Civil Procedure Act*, Order 40 Rule 1, 2 and 3 of the *Civil Procedure Rules*, Article 159 and 162 (2) of *the Constitution*. The Plaintiffs/Applicants sought the following orders;
  - i. Spent
  - ii. Spent
  - iii. That, pending the hearing and determination of this suit this Honourable Court be and is hereby pleased to issue a temporary injunction against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, their agents, servants or any other person acting under their authority restraining them from



transferring, leasing, selling, entering, collecting rent from the Applicant's tenants, interfering with the Plaintiff's occupation and use and/or dealing in any manner with all that parcel of land known as L.R. NO. 1181/326 also known as Kapsabet Municipality/84.

- iv. That, costs of this application be in the cause.
  - v. Any other relief that may be granted by the Court as it deems fit.
2. This application is premised on the grounds appearing on the face of it together with Supporting Affidavit of Lawrence Isindu Kangaya sworn on 20<sup>th</sup> March 2023. The first Applicant deponed that on 5<sup>th</sup> April 2000, he purchased land parcel No. L.R. 118/326 also known as Kapsabet Municipality/84 from the original allottee Jotham Nguza Amisi. Subsequently the said property was transferred in his favour. He also deponed that on 15<sup>th</sup> August 2016, he sold the suit property to his wife Juliana Jebet Isindu, the 2<sup>nd</sup> Plaintiff/Applicant in whose favour the property was registered under. The Applicants annexed a certificate of lease issued under Registration of Titles Act (repealed) bearing three entries. The 1<sup>st</sup> Applicant informed this Court vide his supporting affidavit that between the year 2000 and 2009, he developed the suit property by erecting shops which were currently leased out to tenants.
  3. His further deposition was that the 5<sup>th</sup> Respondent had directed the 6<sup>th</sup> Respondent to issue a lease in favour of the 4<sup>th</sup> Respondent despite the existence of a lease in favour of the original allottee, Jotham Nguza Amisi, who never surrendered the original lease to the Land Registrar.
  4. He also deponed that on 13<sup>th</sup> March 2023, tenants leasing shops erected on the suit property received notices directing them to remit rent to an unknown entity. Upon his investigations at the Land Registry, the 1<sup>st</sup> Applicant discovered an entity known as Sinbokas Machinery Limited was the registered owner of the suit property as from 5<sup>th</sup> May 2022. He stated that the 2<sup>nd</sup> Plaintiff/Applicant and himself have been in continuous possession of the suit property and the same has never been available for alienation or allocation. Therefore, the registration in favour of the 4<sup>th</sup> Respondent was irregular. Illegal, null and void and no title or interest in land could be passed by the 4<sup>th</sup> Respondent to any other party. He prayed for the orders sought as a result.
  5. The application was opposed by the 3<sup>rd</sup> Defendant/Respondent vide Replying Affidavit dated 5<sup>th</sup> April 2023. He stated that he was a Director of the 1<sup>st</sup> Defendant hence his capacity to swear the said affidavit on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents. He deponed that the 1<sup>st</sup> Defendant/Respondent was the legal owner of that parcel of land known as Kapsabet Municipality/84, the suit property herein. That indeed notices were issued to the tenants on the suit property at the instructions of the 1<sup>st</sup> Defendant/Respondent. He contended that the certificate of title held by the Plaintiffs was false and fraudulent. As a result he prayed for dismissal of the application.
  6. In response to the Replying Affidavit, the 2<sup>nd</sup> Plaintiff/Applicant filed a further affidavit dated 15<sup>th</sup> May 2023. She averred that she is the registered owner of the suit property. That the certificate of lease annexed to the Replying Affidavit was illegal, null and void since the same was issued yet there was no surrender of the title she possesses. In the circumstances, she prayed for status quo obtaining in the property be maintained pending determination of the suit.
  7. This application was canvassed by way of written submission which this Court has carefully considered together with authorities relied upon therein. The Court makes the following determination:-

**Analysis and Determination: -**

8. I have framed the following issues for determination;



- i. Whether the Plaintiffs/Applicants have met all the requirements to be granted orders of temporary injunction.
  - ii. Who shall bear costs of the application?
9. The requirements to be met by an Applicant in an application such as this were well settled in the celebrated case of *Giella v Cassman Brown & Company Limited* [1973] E A 358 where the Court expressed itself as follows;

“Firstly an Applicant must show 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 an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”
10. Have the Plaintiffs/Applicants made out a *prima facie* case? To answer this I wish to cite the case of *Mrao v First American Bank of Kenya Limited & 2 others* [2003] KLR 123 whereby a *prima facie* case was described as: -

“a *prima facie* case in a Civil includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the Court, a tribunal properly directing itself will include 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.”
11. Going back to the facts of this case but without delving into the issues conclusively at this stage, the 2<sup>nd</sup> Plaintiff/Applicant has alleged that she is the registered owner of the suit property known as L.R. No. 1181/326 which has also been referenced as Kapsabet Municipality/84. She produced a certificate of title issued under the Registration of Titles Act (now repealed) to support her assertion. Both Plaintiffs/Applicants also allege that they have been in possession of the said property since the year 2000 until now. To buttress this position they annexed photographs of shops they erected on the suit property.
12. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on their part have also produced a certificate of lease over property known as Nandi/Kapsabet/Municipality/84 registered in the name of the 1<sup>st</sup> Respondent.
13. It is evidence that the suit property has two competing titles. However, at this interim stage the Court is not in a position to ascertain which title is genuine and which was unlawfully issued. These disputed facts will only become clear during trial with further evidence from Lands Office, Nandi County.
14. Based on the existence of two competing titles over the suit property this Court finds that the Plaintiffs/Applicants have not established a *prima facie* case with probability of success.
15. On the second requirement for grant of temporary injunction which is whether they cannot be compensated by an award of damages, the Applicants alleged that they have been in possession of the suit land since the year 2000 and have erected and leased out shops therein. However, it is noted that only photographs of the alleged shops were provided. The Applicants did not provide any form of tenancy agreement to justify this fact. Moreover, they have not demonstrated the loss they stand to suffer is irreparable and cannot be compensated by an award of damages. This limb consequently fails.
16. On the last requirement, in whose favour the balance of convenience tilts, the Court is of the view that the balance of convenience tilts in favour of maintaining status quo obtaining in the property. By



maintaining status quo, the substratum of the subject matter will be maintained and no party will be prejudiced.

17. In view of the disputed facts earlier demonstrated herein, the Court finds it just to issue an order for maintenance of *status quo* as was the case in [Joash Ochieng Ougo \[1987\]](#) eKLR where the Court of Appeal observed that;

“The general principle which has been applied by this Court is that where there are serious conflicts of fact, the trial Court should maintain the status quo until the dispute has been decided in a trial.”

18. Consequently, the application dated 22<sup>nd</sup> March 2023 is hereby disallowed. In spite of this conclusion, the Court has a duty to preserve the sit property and safeguard the interest of each party pending the outcome of this suit. In line with this duty, the Court issues an order for status quo obtaining on the ground and on the register to be maintained pending the hearing and determination of the suit.

19. It is so ordered.

**DELIVERED AND DATED AT KAPSABET THIS 5TH DAY OF JULY, 2023.**

**HON. M. N. MWANYALE**

**JUDGE.**

**In the presence of;**

**Mr. Mwetich for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents**

**Ms. Cheruiyot for 6<sup>th</sup> and 7<sup>th</sup> Respondents**

**Mr. Murgor for Plaintiffs**

**Mr. Kogo for the 5<sup>th</sup> Defendant**

