



Morop Company Limited v County Government of Nakuru & another (Environment & Land Case 023 of 2022) [2023] KEELC 18916 (KLR) (11 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18916 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 023 OF 2022**

**A OMBWAYO, J
JULY 11, 2023**

BETWEEN

MOROP COMPANY LIMITED PLAINTIFF

AND

THE COUNTY GOVERNMENT OF NAKURU 1ST DEFENDANT

ALLON OAK HOLDINGS LIMITED 2ND DEFENDANT

RULING

1. Morop Company Limited has come to this court against the County Government of Nakuru and Allon Oak holdings Limited claiming to be the registered owner of Kampi ya Moto Block 1/130 (Morop) measuring approximately 2.214 hectares pursuant to a title deed issued in the plaintiff name on July 5, 2021. The plaintiff claims to be in possession of the suit property but prays for the eviction of the defendants who have invaded the same. The plaintiff avers that the defendant entered the property in March 2023 and started developing the property. The plaintiff's claim is based on alleged trespass by the defendant who have no legal interest on the property.
2. The plaintiff has also filed an application praying for a temporary injunction restraining the respondent by themselves, their agents cronies and or servants from entering, erecting structures trespassing, remaining, building and in any other way interfering with the suit property.
3. The 1st defendant has opposed the application on grounds that the Government of Kenya took possession of the property in the year 1976 and put up structures including a permanent house and temporary structure. In the year 1980 the permanent structure was converted into the chief's office. Between 2004 and 2007 the area Member of Parliament completed a building started earlier and the same was named Zonal Education Office and Commissioned by the then Provincial Commissioner Yusuf Haji. The house is being used by the Government of Kenya.



4. In a nutshell the 1st defendant states that the Government of Kenya has heavily invested on the land since 1976 to date to the tune of Ksh 42,000,000. Though the plaintiff has produced a title deed, the defendant alleges that the same is fraudulently obtained. The green card shows that the parcel of land belonged to the government of Kenya and therefore public land.
5. The defendant states that the purported Directors of the company are beneficiaries and not the original members of the plaintiff.
6. In the further affidavit the plaintiff states that when she bought the land, the structures were in place. That the plaintiff allowed the government to use her as their offices due to the fact that they needed their services.
7. The gravamen of the plaintiff's submissions is that they have been in active and quiet possession of the property but were invaded in March 2023 by the 1st defendant who has contracted the 2nd defendant to build structures on its behalf. The plaintiff claims that he has established a prima facie case with a probability of success. This is also supported by the fact that the property is registered in their name.
8. The plaintiff argues that he is likely to suffer irreparable loss if injunction is not granted because the plaintiff is constructing on the suit property and dumping materials for construction on the land.
9. On the issue of balance of convenience, the plaintiff argues that the inconvenience caused to the plaintiff if the injunction is not granted and the suit is allowed is greater than the inconvenience likely to be caused on the defendant if the injunction is granted but the suit is dismissed.
10. On the issue as to whether the plaintiff has demonstrated a prima facie case with a likelihood of success the defendant argues that the application is devoid of merit as the suit land is used for public utility in the form of various Government agencies including the Deputy County Commissioner, IEBC, ministry of education and Administration Police. That the plaintiff has failed to demonstrate that he is the proprietor of the land. The plaintiff's title is not supported by any documents such as green card allocated by government. The green card produced by the defendant shows that the land was initially registered in the names of the government of Kenya.
11. On irreparable loss and damage if the injunction is not granted, the defendant argues that the government has heavily invested on the land to provide the public with essential services. The irreparable loss if any to be suffered by the plaintiff can be compensated by way of damages.
12. On balance of convenience the defendant argues that the plaintiff has not satisfied the 1st and 2nd limbs of conditions to be met to grant temporary injunction.
13. Having considered the application on record, response and rival submissions, I do find that the plaintiff is the registered owner of the suit property measuring 2.214 hectares. The suit property was registered in a register opened on September 2, 1988. The title deed does not show the 1st entry that was made on September 2, 1988. The green card annexed by the defendant shows that the Government of Kenya was registered as the proprietor on September 2, 1988.
14. The title deed shows the 2nd entry being the registration of the plaintiff as the proprietor and title deed issued on the same date. There is no indication as to how the land was transferred from the Government of Kenya to the plaintiff. There is evidence on record that the Government of Kenya has been in possession of land from 1988 to date. When the suit was filed, the Government of Kenya had been in possession for at least 35 years.



15. Moreover, Dickson Kipkemboi Boiyo has not demonstrated on the face of it that he is a director of the plaintiff. He has not annexed any document from the Registrar of Companies to prove that he is a director of the plaintiff. There is no evidence that he is a member of the company.

16. In deciding whether to grant the temporary injunction, I do refer to, and rely on the precedent set out in the case of *Giella v Cassman Brown* (1973) EA 358 In which the conditions for the grant of an interlocutory injunction were settled as follows:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not be normally 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.”

17. Has the plaintiff/applicant made out a *prima facie* case with a probability of success?

18. In the case of *Mrao v First American Bank of Kenya Limited & 2 others* (2003) KLR 125, a *prima facie* case was described as follows:

“a *prima facie* case in a civil application 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 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.”

19. I do find that the plaintiff had not demonstrated a prima- facie case with a likelihood of success because she is not in possession of the land and that she has not demonstrated how she obtained the title deed and yet the land belonged to the government of Kenya.

20. On whether the plaintiff is likely to suffer irreparable loss that cannot be compensated with damages if injunction is not granted but he succeeds in the suit, I do find that the plaintiff is not in possession of the suit property which is already developed. Though he has title to the property, the same has been in possession of the 1st defendant for the last 35 years. I do find that the facts of this case demonstrate that the plaintiff will not suffer any irreparable loss as he can be compensated in damages.

21. On balance of convenience, I do find that the defendant will suffer a greater inconvenience if the injunction is allowed and the suit is ultimately dismissed because he has structure already on the ground and has been utilizing them in public interest. Furthermore the injunction will amount to an eviction of the defendant if the same is issued as requested. The upshot of the above is that the application is dismissed. Costs in the cause.

Ruling dated, signed and delivered virtually at Nakuru this 11th day of July 2023.

A O OMBWAYO

JUDGE

elc e023 of 2023	0
------------------	---

