



**Muthiani & 9 others v Ngumbi & 2 others (As trustees/officials of New Eastleigh Akamba Dancers) & another (Environment & Land Case E024 of 2023) [2023] KEELC 20679 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20679 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E024 OF 2023**

**J OMANGE, J  
OCTOBER 5, 2023**

**BETWEEN**

**DAVID MUSYOKI MUTHIANI ..... 1<sup>ST</sup> PLAINTIFF  
ANNAH NDUKU KAVUTI ..... 2<sup>ND</sup> PLAINTIFF  
KELI KITONGA ..... 3<sup>RD</sup> PLAINTIFF  
MUKONYO KALELI ..... 4<sup>TH</sup> PLAINTIFF  
DANIEL KIOKO KYULI ..... 5<sup>TH</sup> PLAINTIFF  
JOHN KIOKO KIVUTHI ..... 6<sup>TH</sup> PLAINTIFF  
AGNES KAVILA KISWILI (FAMILY OF THE LATE STEPHEN KALENGA  
KISWILI) ..... 7<sup>TH</sup> PLAINTIFF  
MUIA MUINDE (FAMILY OF THE LATE NDULULU MUINDE) 8<sup>TH</sup> PLAINTIFF  
PATRICK K NDETO (FAMILY OF THE LATE KINYENZE  
NDETO) ..... 9<sup>TH</sup> PLAINTIFF  
MAGDALENA MUENI PETER (FAMILY OF THE LATE MARY  
ISAKI) ..... 10<sup>TH</sup> PLAINTIFF**

**AND**

**JULIUS MWANZIA NGUMBI, WAMBUA NZIOKA, BOSCO MULWA  
(AS TRUSTEES/OFFICIALS OF NEW EASTLEIGH AKAMBA  
DANCERS) ..... 1<sup>ST</sup> DEFENDANT  
QAIRE INVESTMENTS & COMPANY LTD ..... 2<sup>ND</sup> DEFENDANT**



## RULING

1. The application dated 20<sup>th</sup> July, 2023 is brought in respect of the property L.R no 36/ 1 /1032 (the Suit Property).
2. The application prays for the following reliefs:
  - a. Spent.
  - b. That the Defendants and/or their agents and/or servants and/or anyone acting under them be restrained by way of temporary injunction from evicting the Plaintiffs and/or in any other manner from interfering with the Plaintiffs' quiet occupation, use and enjoyment of the property known as LR no 36/1/1032 situated in Eastleigh in Nairobi registered/owned by New Eastleigh Akamba Dancers Self Help Group and restrained from selling, disposing, or in any other manner dealing with it pending the hearing and determination of this application.
  - c. That the Defendants and/or their agents and/or servants and/or anyone acting under them be restrained by way of temporary injunction from evicting the Plaintiffs and/or in any other manner from interfering with the Plaintiffs' quiet occupation, use and enjoyment of the property known as LR no 36/1/1032 situated in Eastleigh in Nairobi registered/owned by New Eastleigh Akamba Dancers Self Help Group and restrained from selling, disposing, or in any other manner dealing with it pending the hearing and determination of this suit.
  - d. That the costs of this application be provided for.
3. The Application is based on the grounds inter alia that the Plaintiffs are members of new Akamba Dancers Self Help group that owns the property LR no 36/1/1032 situated in Eastleigh, Nairobi since early 1970s. The Plaintiffs aver that they have resided on the suit property since then. They state that they have received threats and intimidation from the Defendants.
4. The application is supported by the affidavit Keli Kitonga the 3<sup>rd</sup> Plaintiff in which he depones that the Plaintiff and the 1<sup>st</sup> Defendants are members of New Akamba Self Help group while the 1<sup>st</sup> Defendants are the registered trustees charged with the responsibility of running the affairs of the self-help group on behalf of the members.
5. The Plaintiffs through the 3<sup>rd</sup> Plaintiff aver that Akamba Self Help group is the registered owner of the suit property since the 1970s. That upon allocation of the suit property each member of the group was allocated a plot on which some members have constructed their homes in which they reside. The Plaintiffs contend that the trustees have negotiated the sale of the suit property to the 2<sup>nd</sup> Defendant. They state that the sale of the property would result in great injustice more so given that the property is being sold at a lower price than it should.
6. The application is strenuously opposed by the Defendants. Julius Mwanzia Ngumbi filed a Replying Affidavit on behalf of the Defendants in which he traced the history of the allocation of the suit property which he said is held in trust on behalf of a Limited Liability Company. It was his evidence that the self-help group had been converted to a Limited Liability Company. Further that the majority shareholders had approved the sale of the suit property. In a Supplementary affidavit filed by 3<sup>rd</sup> Plaintiff, the Plaintiffs discounted the averments by the Defendants.



7. Both Counsels filed written submissions which I have duly considered. The issues for determination are; Whether the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Plaintiffs have *locus standi* to file the suit. Whether an injunction should be granted as prayed
8. On the question of *locus standi* it is the case of the Defendants that the 7<sup>th</sup>-10<sup>th</sup> Plaintiffs have filed the suit without letters of administration hence should be struck out from the suit. I note that given the circumstances of this case, this is an issue that is best addressed after hearing the evidence when all the material has been placed before the court.
9. The law on grant of interlocutory injunctions is set out under Order 40 Rule 1 (a) and (b) of the [Civil Procedure Rules](#) as follows:
 

“ Where in any suit it is proved by affidavit or otherwise –

  - a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
  - b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in execution of any decree that may be passed against the defendant in the suit;

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”
10. The principles for grant of injunction are well settled by the *locus classicus* of *Giella v Cassman Brown & Company Limited* [1973] E.A. 358., where the court stated thus:
 

“ First, 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.”
11. This court is thus required to determine whether the applicant has satisfied the three conditions for grant of injunction. In [Nguruman Limited v Jan Bonde Nielsen & 2](#) the Court of Appeal had this to say on prima facie case; “ 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”
12. In this case, the applicants contend that the suit property is in the name of Akamba Self Help Group and not in the name of the company. They deny that the property was ever transferred to the company as alleged by the Defendant. On the other hand, the Defendants do not deny that the property is in the name of Akamba Self Help group but allege that the trustees hold it in trust for the company not the Self Help. They also insist that the members of the group do not live on the suit property as alleged. The court has considered the averments by the applicant and the respondents. It is evident that there are facts that are seriously contested by both parties. The court can only fairly get to make a determination



on these matters during the hearing of the main suit. In the interim it is imperative that the *status quo* be maintained so as to allow a full ventilation of the issues.

13. As such the court makes the following orders;
- a. *Status quo* should be maintained pending the hearing and determination of the suit. As such the suit property should not be transferred to any third parties. All the parties should be allowed to freely access their structures on the property.
  - b. The costs will abide the determination of the main suit.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 5<sup>TH</sup> DAY OF OCTOBER, 2023.**

**JUDY OMANGE**

**JUDGE**

In the presence of: -

Mr. Ms Chelangat for Plaintiff/Applicant

Ms Evalyne for Dr. Musau for Defendant

Steve - Court Assistant

