



**Kioko v Mutunga (Environment & Land Case E068 of 2021)
[2022] KEELC 76 (KLR) (4 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 76 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E068 OF 2021**

A NYUKURI, J

MAY 4, 2022

BETWEEN

ROBINSON KIOKO PLAINTIFF

AND

ZACHARIA MUSILA MUTUNGA DEFENDANT

RULING

INTRODUCTION

1. Vide a Notice on Motion Application dated 2nd July 2021, the Applicant moved the court for the following orders;
 - 1) Spent.
 - 2) Spent.
 - 3) THAT pending the hearing of this suit, the Honorable court be pleased to grant injunction orders against the Defendant either by himself or his servants, agents, employees or any other person restraining them and each of them from entering, encroaching onto, occupying or in any manner whatsoever alienating or charging or interfering with the Plaintiff/Applicant's right to ownership, possession, use and quiet enjoyment of all that parcel of land known as LR No.27772 Athi River. The Honourable court be pleased to grant a hearing date on priority basis for the Plaintiff Applicant/Application.
 - 4) Pending the hearing of the application filed herein interpartes, and pending the hearing of the suit herein, the Officer Commanding Mlolongo Police Station (O.C.S) and the Officer Commanding Athi River Police Division (O.C.P.D) be directed to safeguard and protect the rights and interests of the Plaintiff/Applicant over the suit property against any encroachment



or interference by the Defendant either by himself or his servants, employees and or agents or any other person whatsoever.

- 5) Costs of the Application be provided for.
2. The application is based on grounds on the face of it and supported by the affidavit sworn on 2nd July 2021 by ROBINSON KIOKO, the Applicant in this matter, where he deposed that by allotment letter dated 18th July 2007, he became the bona fide owner of the land known as L.R 27772 Athi River measuring approximately 4.55 hectares (hereinafter referred to as the suit property); that the process of registration of the parcel was impeded by Gazette Notices issued by the Commissioner of Lands being Gazette Notice No.2932 dated 17th March 2010) and the Director of Surveys (being Gazette Notice 3454 of 1st April 2010) purporting to nullify all allocations of parcels of land within the neighborhood of the parcel, but the said Gazette Notices were rendered unconstitutional by this honorable upon litigation.
3. The Applicant further stated that in May 2021, the Respondent's agents or employees were bringing potential buyers to scout and or inspect the suit property, which had him apprehensive and he believes that there could be an unscrupulous scheme aimed at denying him his rights over the suit property which may prejudice and occasion him irreparable harm if the injunctive orders sought are not granted; that the Applicant has been in continuous occupation of the suit land, since being allocated the same.
4. The application is opposed. The Respondent filed a replying affidavit sworn by himself on 19th July 2021 and deposed that he did not to know the Applicant in person, nor was he aware that he is the owner of the suit property; that the parcel claimed by the applicant is neither fenced nor marked, and that many people have been traversing the area innocently, including the Respondent who has been grazing animals thereon; that he was in the process of erecting a temporary structure for use against hot weather and rains while grazing in what he thought was the parcel owned by a person he had sought permission from; that his intention was not to grab or dispossess the Applicant of his land, and that the Applicant's long absence from the land had created the impression that the parcel was not registered, and therefore he mistakenly started construction on the suit land without intention of grabbing it.
5. The application was canvassed by written submissions. On record are the applicant's submissions dated 2nd November 2021. The Respondents submissions are not on record.

Submissions

6. The Applicant relied on their evidence in support of their Application and submitted that the annexed letter of allotment for the title dated 18th July 2007 as well as the Part Development Plan are proof of his ownership of the suit property. He further argued that the Respondent in his replying Affidavit had admitted to have been grazing animals within a vast empty parcel of land owned by several people. It was also the Applicant's contention that the Respondent did not give any justification as to his being on the suit property where he was found in the company of other men.
7. The Applicant concluded by stating that the he had established a prima facie case with a probability of success as set out in the celebrated case of *Giella v Cassman Brown*(1973) E A 358.

Analysis and determination

8. I have considered the application, the Affidavit in support, the response thereto and the submissions by the Applicant. The issue that arise for determination is whether the Applicant has met the threshold for grant of orders of temporary injunction.



9. The principles governing grant of temporary injunction were well settled in the case of *Giella v Cassman Brown and Company Limited* (1973) E A 358, as follows;
- a) The applicant must demonstrate a prima facie case with a probability of success;
 - b) The applicant must show that they will suffer irreparable injury which cannot be compensated by damages if the injunction is not granted, and
 - c) If the court is in doubt, it ought to decide the application on a balance of convenience.
10. The applicant stated that he is the bona fide proprietor of the suit land. He has attached an allotment letter and a PDP, which demonstrate that he owns the suit property. The same have not been challenged by the Respondent. His allegation that the Respondent has been on his land illegally has been admitted by the Respondent who confirmed to have been grazing his cattle on the land and was even planning to put up a structure on the land. It is therefore clear that while the Applicant has shown that he owns the suit land, the Respondent has not demonstrated any justification for his interference with the same and therefore his presence there amounts to trespass. I therefore find and hold that the Applicant has established a prima facie case with a probability of success.
11. On whether the Applicant stands to suffer irreparable injury which cannot be compensated in damages, the Applicant claims that there is a likelihood of an ongoing scheme aimed at dispossessing him of the suit property. This, he claims, is because of the potential buyers who have been severally brought to inspect the property. The Respondent has however stated that he had no intentions of dispossessing the Applicant and was not aware of the Applicant's rights over the suit property. He however concedes to grazing on the suit property and had intention of constructing thereon. It is my considered view that if injunctive orders are not granted, the Applicant may suffer irreparable injury as he may be dispossessed of his property. As the Respondent has stated that he has no claim over the suit land, the balance of convenience tilts in favour of granting the injunction.
12. In the premises therefore, I find and hold that the application dated 2nd July 2021 is merited and I make the following orders;
- a) THAT pending the hearing and determination of this suit, a temporary injunction be and is hereby granted against the Defendant either by himself or his servants, agents, employees or any other person, restraining them from entering, encroaching onto, occupying or in any manner whatsoever alienating or charging or interfering with the Plaintiff/Applicant's right of ownership, possession, use and quiet enjoyment of all that parcel of land known as LR No.27772 Athi River.
 - b) That the Officer Commanding Mlolongo Police Station (O.C.S) and the Officer Commanding Athi River Police Division (O.C.P.D) is directed to safeguard and protect the rights and interests of the Plaintiff/Applicant over the suit property against any encroachment or interference by the Defendant either by himself or his servants, employees and or agents or any other person whatsoever.
 - c) Costs of the application are awarded to the Applicant.
13. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 4TH DAY OF MAY 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI



JUDGE

In the presence of;

No appearance for the Plaintiff/Applicant

No appearance for the Defendant/Respondent

Ms Josephine Misigo – Court Assistant

