



Savannah Jua Kali Association v Swift Smart Limited & another (Environment & Land Case 169 of 2019) [2022] KEELC 3675 (KLR) (5 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3675 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 169 OF 2019
LC KOMINGOI, J
MAY 5, 2022**

BETWEEN

SAVANNAH JUA KALI ASSOCIATION PLAINTIFF

AND

SWIFT SMART LIMITED 1ST DEFENDANT

NAIROBI CITY COUNTY 2ND DEFENDANT

RULING

1. There are two applications for determination. The notice of motion dated 21st May 2019 is brought under order 40 of the [Civil Procedure Rules](#) and the [Constitution](#) of Kenya and [National Land Commission Act](#).
2. It seeks orders:-
 1. Spent.
 2. Spent.
 3. That at the interpartes hearing the honourable court be pleased to grant or confirm prayer 2 herein pending the hearing and determination of the suit.
 4. That Nairobi City County be assisted and enabled by Buru Buru OCPD to implement the settlement of the applicant members and Moraa Village Members in accordance with the National Land Commission determination dated 23rd March 2018.
 5. That the orders issued by the court be served upon the Deputy County Commission Embakasi and Officer in Charge Donholm for coordination of settlement of the applicants in accordance with the National Land Commission determination dated the 23rd March 2018.
 6. That costs of the suit.



3. The grounds are on the face of the application and are set out in paragraphs (i) to (iii).
4. The application is supported by the affidavit of Anne Khasoa, Chairperson of the Plaintiff sworn on the 21st May 2019.
5. In response to the application the 1st Defendant/Respondent filed an application dated 6th July 2019. The same is brought under section 1A, and 1B and 3A of the Civil Procedure Act, order 40 rule 1, 2 and 3 of the Civil Procedure Rules, the inherent jurisdiction of this court and all the other enabling provisions of law.
6. It seeks orders:-
 1. Spent.
 2. Spent.
 3. That an order of temporary injunction do issue restraining the Defendants herein whether by themselves, their agents, servants, employees, invitees and/or structures, offering for sale, selling, disposing of, charging, sub-dividing, dealing alienating, occupying, managing, letting or otherwise using, residing and remaining or representing himself as the registered owner of the property or in any way whatsoever from interfering with the Plaintiff's proprietary rights including the right to quiet possession and enjoyment over all that piece of land known as Land Reference Number Nairobi Block 82/6192 pending the hearing and determination of the suit herein.
 4. That the honourable court be pleased to issue an order directed at the Officer Commanding Police Division Buru Buru to enforce the orders granted herein.
 5. That the Respondents do bear the costs of this application.
7. The grounds are on the face of the application and are set out in paragraphs (a) to (f).
8. The application is supported by the affidavit of Ahmed Abdulla Abdille, Managing Director of the 1st Defendant/Respondent sworn on the 16th July 2019. The same affidavit in response to the Plaintiff's Notice of motion dated 21st May 2019.
9. There is a replying affidavit sworn by the Chairperson of the Plaintiff in response of the 1st Defendant's Application dated 21st July 2019. The affidavit of Anne Khasoa is sworn on the 17th December 2019.
10. On the 22nd April 2021, the court with the consent of the parties directed that the notice of motions be canvassed by way of written submissions. Mr. Mokuu for the 2nd Defendant/Respondent stated that they would not be participating in the applications. He further stated that they would not be filing any submissions.
11. I have considered the notice of motions, the affidavits in support and the affidavits in response. I have also considered the written submissions filed on behalf of the parties and the authorities cited.
12. It is not in dispute that the 1st Defendant/Respondent is the registered proprietor of the suit property. The Plaintiff on the other hand relies on the proceedings before the National Land Commission revoking the grant to the original grantee of the suit property.
13. It is on record that the 1st Defendant bought the suit property from the original allottee.
14. It is the 1st Defendant's/Respondent's submissions that the intentions of the Plaintiff is to invade the suit premises and cause wanton distraction leaving the suit property being wasted and damaged. I find



that the apprehension is real. There is need to persevere the suit property pending the hearing and determination of the suit herein.

15. I find that it is in the interest of justice that the status quo be maintained. The 1st Defendant/ Respondent is hereby directed not to develop or dispose of the suit property pending the hearing and determination of the suit. The cost of the application do abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 5TH DAY OF MAY 2022.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Omino for the Plaintiff

Mr. Tanui for the 1st Defendant

Mr. Mokuu for the 2nd Defendant

Steve - Court Assistant

