



**Torab (K) Ltd v Kamwere & 10 others (Environment and Land Case
Civil Suit E239 of 2021) [2022] KEELC 94 (KLR) (5 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 94 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E239 OF 2021**

LC KOMINGOI, J

MAY 5, 2022

BETWEEN

TORAB (K) LTD APPLICANT

AND

WANJIRA KAMWERE 1ST DEFENDANT

JAMES KAMWERE MURIUKI 2ND DEFENDANT

ROBERT MWIRIGI MUTHURI 3RD DEFENDANT

MUTISO WAMBUA 4TH DEFENDANT

KANDIMUWA LIMITED 5TH DEFENDANT

REGISTRAR OF TITLES 6TH DEFENDANT

NAIROBI CITY COUNTY GOVERNMENT 7TH DEFENDANT

CHIEF VALUER NAIROBI METROPOLITAN SERVICES 8TH DEFENDANT

CHIEF OFFICER PLANNING NAIROBI CITY COUNTY 9TH DEFENDANT

NAIROBI METROPOLITAN SERVICES 10TH DEFENDANT

REGISTRAR OF COMPANIES 11TH DEFENDANT

RULING

1. This is the notice of motion dated 5th July 2021 brought under order 40 rules 1 and 2 and order 51 rule 1 of the [Civil Procedure Rules](#), 2010, section 1A, 1B, 3A and Section 63 (e) of the [Civil Procedure Act](#), Cap 21, section 13 of the [Environment and Land Court Act](#), 2011 and all other enabling provisions of the law.



2. It seeks orders:-
 1. Spent
 2. Spent
 3. That a temporary injunction do issue restraining the 6th Defendant/Respondent from registering further transactions namely: transfer, charge, power of attorney, transmission and any other instrument that my transfer rights and ownership of the property referred to as LR 36/1/48 to a third party pending the hearing and determination of this suit.
 4. That a temporary injunction do issue restraining the 7th, 8th, 9th, 10th and 11th Defendants/ Respondents from registering further transactions and altering records held at their offices with regard to the property pending the hearing and determination of this suit.
 5. That the officer commanding Pangani Police Station do enforce compliance with the orders of this court.
 6. That cost of this application be in the cause.
3. The grounds are on the face of the application and are set out in paragraphs (a) to (d).
4. The application is supported by the affidavit sworn by Abdirashid Ismail Daud, a director of the Plaintiff/Applicant on the 5th July 2021.
5. The Application is opposed. There is a replying affidavit sworn by James Kamwere Muriuki, the 2nd Defendant/Respondent herein on the 19th July 2021. He is also a director of the 5th Defendant together with the 1st Defendant. He told the court that he had been authorized to swear the affidavit on behalf of the 1st and 5th Defendants/Respondents. He also swore a further affidavit on the 8th November 2021.
6. There is a replying affidavit sworn by the 4th Defendant/Respondent.
7. On the 16th September 2021, the court directed that the notice of motion be canvassed by way of written submissions.
8. I have considered the notice of motion and the affidavits in support. I have also considered the affidavit in response, the written submissions and the authorities cited. The issues for determination are:-
 - i. Whether the Plaintiff's/Applicant's application meets the threshold for grant of temporary injunction.
 - ii. Who should bear costs of this application?
9. It is the Plaintiff's/Applicant's case that it is the registered proprietor of the suit property.
10. In his affidavit sworn on the 5th July 2021, the director of the Plaintiff/Applicant states that it bought the suit property from the 3rd and 4th Defendants who were acting as directors of the 5th Defendant.
11. He further states that the 7th to 10th Defendants/Respondents have changed the particulars of the rate payer and replaced with those of the 5th Defendant/Respondent yet the 5th Respondent had transferred the suit property.
12. The 1st, 2nd, and 5th Defendants/Respondents case is that the 5th Defendant is the registered proprietor of the suit property since 1978 and that they did not know and have never met the 4th Defendant/ Respondent.



13. They have annexed a grant registered as IR 33977 dated 12th November 1979 for LR NO 36/1/581. They have also annexed a search from the Registrar of Business Registration Services which shows that the directors of the 5th Defendant are the 1st and 2nd Defendants as at 28th June 2021. There is no mention of the 3rd and the 4th Defendants. They have also annexed property rates payment request and receipts form 2013 to date. They have been paying rates.
14. The 4th Defendant in his replying affidavit states that he has been in occupation of the suit property for over thirty (30) years and has acquired interest through adverse possession. I agree with the 1st and 2nd and 5th Defendants/Respondents' submissions that the acquisition of interest of land through adverse possession is done through a prescribed procedure which the 4th Defendant/Respondent did not invoke.
15. The Records at the 6th and the 7th Defendants/Respondents reflect the 5th Defendant/Respondent as the owner of the suit property. The suit property has never been registered in the 3rd and 4th Defendant's names.
16. In conclusion, I find no merit in this application and the same is dismissed. The costs do abide the outcome of the main suit.

It is so ordered.

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

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Gathumbi for the 1st, 2nd and 5th Defendants/Respondents

Mr. Onyango for the 4th Defendant/Respondent and also holding brief for Ms Otunga for the Plaintiff/
Applicant

Steve - Court Assistant

