



REPUBLIC OF KENYA



**Muema & 23 others v Mutuku & 20 others (Environment & Land
Case 24 of 2020) [2022] KEELC 77 (KLR) (6 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 77 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 24 OF 2020**

CA OCHIENG, J

JUNE 6, 2022

BETWEEN

ALEXANDER MAKAU MUEMA 1ST PLAINTIFF
JOSEPH MUSYOKA BASIL 2ND PLAINTIFF
PETER MUNYWOKI MUTIE 3RD PLAINTIFF
ROSEMARY ANYANGO SIAMBE 4TH PLAINTIFF
AGNES AUMA OWINO 5TH PLAINTIFF
DAVIS KAMUTI MWANGANGI 6TH PLAINTIFF
JOSEPH MUSIKALI MUTEMI 7TH PLAINTIFF
REGINA NGWASI MUNYOKI 8TH PLAINTIFF
PHILIP KIBIRECH NGETICH 9TH PLAINTIFF
SAMMY MUTHAI 10TH PLAINTIFF
STEPHEN MUTURI WANG'ONDU 11TH PLAINTIFF
JUDITH NTHAMBI NZOMO 12TH PLAINTIFF
BERNADETTE MAVUTI 13TH PLAINTIFF
JOSEPH KIVUVA MUNYETI 14TH PLAINTIFF
LT. GEN. ADAN KANCHORO MULATA 15TH PLAINTIFF
HAWA MALYUN MOHAMMED 16TH PLAINTIFF
MICHAEL KYALO KYENDE 17TH PLAINTIFF
WILLIAM KILONZO 18TH PLAINTIFF
FRONAH VIGELI MANERA 19TH PLAINTIFF



TIMOTHY MAINGI 20TH PLAINTIFF
 JAMES KANYAA KATUNDU 21ST PLAINTIFF
 JOSEPHINE KILONZO 22ND PLAINTIFF
 PHANICE M. TSIKHUZU 23RD PLAINTIFF
 SUSAN KARANJA 24TH PLAINTIFF

AND

DAVID MUTUKU 1ST DEFENDANT
 ANTHONY KITHOKOI 2ND DEFENDANT
 JONATHAN MULI ALIAS MUTUMO 3RD DEFENDANT
 JACOB OBUDHO 4TH DEFENDANT
 JACOB MUTISYA 5TH DEFENDANT
 TITUS SIMIYU 6TH DEFENDANT
 PETER NZIOKI ALIAS ‘AS 7TH DEFENDANT
 JOAS AMINGA 8TH DEFENDANT
 ABED MUTHIANI 9TH DEFENDANT
 JOHN NZIOKA ALIAS FUNDI JOHN 10TH DEFENDANT
 FESTUS NZOMO MUTISYA 11TH DEFENDANT
 PHILIP MUOKI 12TH DEFENDANT
 SYLVESTER MUSYOKI 13TH DEFENDANT
 PETER KIMULI 14TH DEFENDANT
 JOHN NZIOKA ALIAS KISITHE 15TH DEFENDANT
 DENNIS KELI 16TH DEFENDANT
 PETER MUSYOKA ALIAS KNUT 17TH DEFENDANT
 MAURICE MUTURE 18TH DEFENDANT
 PETER NDUNDA 19TH DEFENDANT
 TOM NYAMBUTO NYAKWARA 20TH DEFENDANT
 NEW HOPE MINISTRIES 21ST DEFENDANT

RULING

1. What is before Court for determination is the Plaintiffs’ Notice of Motion Application dated the 21st September, 2020 brought pursuant to Order 40 Rule 1(a) of the *Civil Procedure Rules* and Section 13(7) of the *Environment and Land Court Act*. The Plaintiffs seeks the following orders:



1. Spent.
 2. That pending the hearing and determination of the main suit hereof, a temporary injunction do issue restraining the Defendants/Respondents, whether by themselves or their agents, servants, surrogates or any other person acting or purporting to act on their behalf from selling, offering for sale, carrying out construction, alienating, entering upon or in any other manner howsoever interfering with the Plaintiffs' properties namely LR Nos. 26524, 26525, 22520, 28258, 25019, 21739, 26935, 23957, 24425, 28351, 28561 and 28766, 29367, 24541/2 and 24541/3, 24536, 26373, 26375, 23338, 23313, 25153, 28333, 28733, 25541, 24541, 25540, 29504, 24717, 23334 and 23314.
 3. That pending the hearing of this application inter parte, prayer 2 above do issue in the interim.
 4. That the OCS Mlolongo Police Division, do enforce the order(s) which the Honourable Court may grant hereof.
 5. That costs of this application be provided for.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Alexander Makau Muema, the 1st Plaintiff herein, who also swears the same on behalf of the other Plaintiffs and deposes that together with the Co-Plaintiffs, they are registered as absolute proprietors of L.R. Nos. 26524, 26525, 22520, 28258, 25019, 21739, 26935, 23957, 24425, 28351, 28561, 28766, 29367, 24541/2, 24541/3, 24536, 26373, 26375, 23338, 23313, 25153, 28333, 28733, 25541, 24541, 25540, 29504, 24717 and 23334, hereinafter referred to as the '*suit lands*'. He contends that the Defendants and their agents, servants including surrogates have trespassed on the suit lands, started excavating the ground and are actively putting up illegal structures thereon. He denies that the Plaintiffs have ever sold the suit lands to the Defendants. He insists none of the Defendants are in possession of the suit lands. He avers that the Defendants are trespassers on the suit lands and their actions thereon are unjustified, illegal and border on crime. He urges the court to grant an order of temporary injunction restraining the Defendants from interfering with the suit lands so as to preserve them. He reiterates that the Plaintiffs have been unlawfully and unjustifiably been prevented by the Defendants from accessing their rightful entitlements namely the suit lands.
 3. The 1st to 10th, 13th, 14th and 19th Defendants opposed the Application and filed a Replying Affidavit sworn by John Nzioka on his behalf and on behalf of the other named Defendants, where he deposes that the instant Application is fatally defective as the Deponent failed to file an Authority to Plead on behalf of others. Further, that all annexures not belonging to the Deponent are irregularly and illegally in the Court file since the maker of the said affidavit did not have authority. He contends that the alleged titles annexed to the Supporting Affidavit were fraudulently obtained, since the regime under which they were issued and registered clearly contradicts everything since Kenya post 2010, [Constitution](#). Further, it is misleading and improper to have lands being registered under the old regimes even after the said Land Laws were repealed and replaced by the current Land Laws. He avers that they have peacefully lived at the disputed properties for more than twenty years and the Plaintiffs have never raised any claim over the said properties. Further, they have even developed permanent structures thereon. He insists the Plaintiffs have obtained fake titles that they have filed before Court so that they can sanitize their illegal including unlawful process. Further, that they have been issued with land ownership titles and continue to live at the suit lands peacefully. He reiterates that they were allocated their land by the government and continue to pay rates. He challenges the Plaintiffs' Certificates of Title and claims some of the annexed one do not belong to them. He sought for the said titles to be expunged from record.



4. The application was canvassed by way of written submissions.

Analysis and Determination

5. Upon consideration of the Plaintiffs' Notice of Motion Application dated the 21st September, 2020 including the respective affidavits, annexures and rivaling submissions, at this juncture, the only issue for determination is whether the Plaintiffs' are entitled to orders of temporary injunction pending the outcome of the suit.
6. The Plaintiffs' in their submissions reiterated their averments as per the Supporting Affidavit and insisted they had met the threshold set for granting of injunctive relief. They averred that their Certificates of Title were *prima facie* evidence that the lands described therein belonged to them. Further, that they had demonstrated rights and interests over the suit lands, which ought to be safeguarded. They reiterated that they had established a *prima facie* case to warrant the orders as sought. To buttress their averments, they relied on the following decisions: *Giella v Cassman Brown & Co. Ltd* (1973) EA 358 and *Joel Kipkurui Arap Koech vs Alice Wambua Magandu & 2 others* (2018) eKLR.
7. The 1st to 10th, 13th, 14th and 19th Defendants filed their submissions where they insist the Plaintiffs have not satisfied the principles set on granting of temporary injunction. They contend that the Plaintiffs' have failed to inform court of the interest they have in regard to the 1st Defendant's piece of land as they are two distinct plots. They aver that the Defendants have demonstrated that they have documents from the government unlike the Plaintiffs who have Sale Agreements and Title Deeds not belonging to them. They reiterate that the instant Application is scandalous, frivolous and vexatious. Further, that the Supporting Affidavit is incurably defective. To support their arguments, they have relied on myriad of decisions including: *Kevin K. Mwiti & Others v Kenya School of Law & others*; *Kenya Association of Manufacturers & 2 Others v Cabinet Secretary-Ministry of Environment & Natural Resources & 3 others* [2017] eKLR; *Showind Industries Ltd Vs Guardian Bank Ltd & Another* [2002] IEA 284 (CCK); Petition No. 16 of 2011, *Nairobi-Centre for Rights Education and Awareness (CREAW) & 7 others*; *Judicial Service Commission v Speaker of the National Assembly & Another* [2013] eKLR; *Gitirau Peter Munya v Dickson Mwenda Kithinji & 2 others*; *Simeon Kioko Kitheka & 18 Others v County Government of Machakos & 2 Others* (2018) eKLR; *Dream Camp Kenya Ltd v Mohammed Eltaff & 3 Others* Civil Appeal No. 170 of 2012; *Giella vs Cassman Brown & Company* (1973) EA 358; *Mrao Ltd v First American Bank of Kenya & 2 Others* [2003] KLR 125; *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR; *Ktama Wangai v John N. Mugambi & another* [2012] eKLR and *Karuri & Others vs Dawa Pharmaceuticals Company Limited & others* [2007] 2 EA 235.
8. The Plaintiffs have sought for orders of injunction against the Defendants claiming the Defendants are interfering with the suit lands and blocked them from accessing them. As to whether the Plaintiffs have established a *prima facie* case with a probability of success at the trial, I will rely on the principles established in the case of *Giella v Cassman Brown & Company* [1973] EA 358 as well as the definition of a *prima facie* case as stated in the case of *Mrao Ltd v First American Bank of Kenya & 2 others* [2003] KLR 125. The Plaintiffs annexed their respective Certificates of Title in respect to the suit lands which the Defendants challenge and claim are not authentic. The 1st to 10th, 13th, 14th and 19th Defendants claim they also have documents of title in respect to their lands. I have had a chance to peruse the pleadings including documents presented by both parties and I note in the Supporting Affidavit, the Plaintiffs have annexed their Certificates of Title issued on different dates, with some even annexing Deed Plans. The Defendants claim ownership of the suit lands but have only annexed Letters of Allotment for some of the plots which were issued to different parties on diverse dates. Further, I note the said Letters of Allotment do not bear the Defendants' names. It is trite that injunctive reliefs suffice so as to protect the substratum of the suit and a party seeking injunctive relief must come to



court with clean hands. In this instance, I note the Plaintiffs hold their respective Certificates of Title. Further, the Defendants have not controverted the averments that they have blocked the Plaintiffs from accessing their respective parcels of land. It is trite that Certificates of Title are *prima facie* evidence of ownership of the lands unless it is proved the parties acquired the same through fraud which has not been demonstrated herein and at this juncture I hold that the Plaintiffs' own their respective parcels of land. Further, the Defendants have claimed the Plaintiffs' affidavit is fatally defective as the Deponent had not annexed the authority to plead. I wish to refer to paragraph 2 of the Supporting Affidavit where the Deponent stated as follows:

“ That I swear this affidavit for myself and on behalf of my co – Plaintiffs. Further, I confirm that my Co-Plaintiffs have permitted me to swear this affidavit on their behalf.”

9. To my mind and since the said Affidavit has been given under oath and duly signed and sworn, I do not find it fatally defective as claimed by the Defendants. The Defendants have further not demonstrated what prejudice they stand to suffer since the said Authority to Plead was omitted. I opine that the Defendants seeks to rely on technicalities and in accordance to Article 159(2) (d) of *the Constitution*, I hold that this is a defeated avenue. I further do not find the instant Application frivolous and vexatious as claimed by the Defendants as the Plaintiffs hold Certificates of Title to their lands and are merely seeking to protect them.
10. In the circumstance, I find that the Plaintiffs have demonstrated a *prima facie* case as against the Defendants to warrant the granting of orders as sought.
11. As to whether the Plaintiffs will suffer irreparable harm which cannot be compensated by way of damages. I note the Plaintiffs are registered as proprietors of the suit lands and produced their Certificates of Title to that effect. The Defendants have not denied that they have restrained the Plaintiffs from accessing their lands. Further, the Defendants have only produced Letters of Allotment which do not bear their names. In relying on the principles established in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, I find that the Plaintiffs injuries are not speculative and they will indeed suffer irreparable harm if the orders sought are not granted.
12. On the question of balance of convenience, at this juncture, I find that the said balance tilts in favour of the Plaintiffs who own the suit lands.
13. It is against the foregoing that I find the Plaintiffs' Notice of Motion application dated the 21st September, 2020 merited and will allow it.
14. Costs will abide the outcome of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 6TH DAY OF JUNE, 2022

CHRISTINE OCHIENG

JUDGE

