



REPUBLIC OF KENYA



KENYA LAW
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Orbit Chemical Industries Ltd v Nairobi City County & 3 others (Environment & Land Case E401 of 2021) [2022] KEELC 2503 (KLR) (7 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2503 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E401 OF 2021**

OA ANGOTE, J

JULY 7, 2022

BETWEEN

ORBIT CHEMICAL INDUSTRIES LTD PLAINTIFF

AND

NAIROBI CITY COUNTY 1ST DEFENDANT

NAIROBI METROPOLITAN SERVICES 2ND DEFENDANT

ANN KANANU MWENDA 3RD DEFENDANT

MOHAMED BADI 4TH DEFENDANT

RULING

1. In the Notice of Motion dated 22nd November, 2021, the Plaintiff has sought for the following orders;
 - a) That this Honourable Court be pleased to issue a Temporary Injunction against the Defendants their servants agents licensees or whoever is acting on their behalf restraining them from trespassing onto, invading, subdividing, remaining upon, and/or interfering with the Plaintiffs quite possession, occupation and use of its property L. R. No. 12425 which it has now sub-divided into Nairobi Block 263/1 to 263/1339 pending the hearing and determination of this suit.
 - b) That this Honourable court be pleased to issue an order to the Embakasi sub-county police Commander, Officer Commanding Station Villa Police Station, principal Secretary Interior, Regional Commissioner, Nairobi Region and Nairobi Regional Police Commander to provide security and ensure compliance with this court's orders.
 - c) That the costs of this application be provided for.



2. The application is supported by the Affidavit of the Managing Director of Geoner Systems Limited, the authorized agent and officer of the Plaintiff, who has deponed that he was authorized by the Plaintiff to sub-divide, market and sell the suit property to purchasers.
3. According to the deponent, the Plaintiff is the registered proprietor of land known as L R. No. 12425 which it has now sub-divided to create Nairobi Block 2639/1 to 263/1339; that prior to the institution of this suit, there were grabbers who had encroached on the suit property and that the said grabbers moved to court to sanitize their illegal acts in High Court Miscellaneous Application number 784 of 1996.
4. According to the Plaintiff's agent, the High Court made an order in HC Misc. Application No. 784 of 1996 to the effect that the grabbers who were trespassers on the Plaintiff's property were to vacate and give vacant possession and that the court directed the Plaintiff herein to apply to the court for eviction orders in the event of non-compliance with the order.
5. It was deponed that the grabbers obeyed the court order and vacated the suit property and that however, the 3rd and 4th Defendants on 19th November, 2021 trespassed upon the Plaintiff's property in the company of goons and members of the public and incited them to invade the suit property.
6. It is the Plaintiff's case that the incitement of the public by the Defendants to invade the suit property amounts to violation of the Plaintiff's constitutional rights which protects private property and that in HCCC No. 876 of 2004, the Government was directed by the court to evict squatters who were on the Plaintiff's land.
7. In reply, the county solicitor of the 1st Defendant deponed that the Plaintiff's suit and application do not disclose any cause of action and/or unlawful conduct against the 1st Defendant; that the alleged goons who have invaded the suit property have not been joined in the suit and that the 1st Defendant has no presence on the suit property.
8. In his submissions, the Plaintiff's advocate submitted that on 19th November, 2021, the 3rd and 4th Defendants trespassed upon the Plaintiff's property in the company of goons and members of the public and incited them to invade the Plaintiff's vacant land and occupy it illegally.
9. It was submitted that the said incitement by the 3rd, and 4th Defendants is an apparent infringement of the Applicant's right to property under Article 40 of *the Constitution*. Counsel submitted that in High Court Misc. Application No. 784 of 1996, the court declared that no person, save under the law, or with the leave of the Plaintiff, may enter or remain on its suit property.
10. According to the Plaintiff's counsel, pursuant to the High Court orders, the Defendants and squatters are *persona non grata* to the suit property and that the application should be allowed.
11. On his part, the 1st Defendant's advocate submitted that the Plaintiff only makes reference to the 3rd and 4th Defendants having incited members of the public to trespass on the suit property and that it will be in vain if the court was to issue an injunctive relief against parties who are at no fault at all.
12. It was submitted by the 1st Defendant's counsel that the Defendants do not reside neither are they in possession of the Plaintiff's land and that the Plaintiff has no cause of action as against the Defendants.
13. This suit was commenced by way of a Plaint dated 22nd November, 2021. In the Plaint, the Plaintiff has sought for a permanent injunction against the Defendants or their servants from "trespassing onto, invading, sub-dividing remaining upon or interfering with the Plaintiff's quite possession, occupation and use of its property L. R. No. 12425 which it has now sub-divided into Nairobi Block 263/1 to



263/1339.” This is the same order, on a temporary basis, that the Plaintiff is seeking in the present application.

14. The application dated 22nd November, 2021 is for a temporary order of injunction pending the hearing and determination of the suit.
15. The application is premised on the ground that on 19th November, 2021, the 3rd and 4th Defendants ‘trespassed’ upon the Plaintiff’s property in the company of goons and members of the public and incited them to invade the Plaintiff’s vacant land, sub-divide it and to illegally occupy it.
16. The evidence of the said incitement by the 3rd and 4th Defendants on the invasion of the suit property by a multitude of people is not before this court. Indeed, although the Applicant referred the court to some online links, it was upon the Applicant to seek the leave of the court and open the links in the presence of all the parties to enable them watch and respond. Having failed to do so, the quoted links have no evidential value at all.
17. The Plaintiff has referred this court to a Ruling that was delivered by the court on 5th May, 2006 in High Court Misc. Civil Application Number 784 of 1996. In the said Ruling, the High Court made the following orders;
 - “ 3. It is hereby declared that no person, save under the law, or with leave of the Interested Party (The Plaintiff herein), may enter upon or remain on the suit property, L. R. No. 12425 Nairobi.
 4. In the event of non-compliance with order No. 3 herein, the Interested Party may apply to the court for eviction orders; and any such application made in the High Court shall be heard and disposed of in the Civil Division, and on the basis of priority.”
18. The above order has never been set aside. That being so, the order should suffice for the purpose of restraining the Defendants herein from interfering with the suit property. It was not necessary for the Plaintiff to file another application for injunctive orders in view of the existing orders in the above matter.
19. For those reasons, the application dated 22nd November, 2021 is dismissed but with no order as to costs.

DATED, SIGNED AND DELIVERED IN NAIROBI VIRTUALLY THIS 7TH DAY OF JULY, 2022.

O. A. Angote

Judge

In the presence of;

Ms Merichi for the Plaintiff/Applicant

No appearance for the Defendants

Court Assistant- June

