



Kana & another v Director of Survey & 3 others (Environment & Land Case 574 of 2017) [2022] KEELC 14657 (KLR) (3 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14657 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 574 OF 2017
LN MBUGUA, J
NOVEMBER 3, 2022**

BETWEEN

LALIT BABA KANA 1ST PLAINTIFF

MANJULA LALIT KANA 2ND PLAINTIFF

AND

DIRECTOR OF SURVEY 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

HAFAYA CONSTRUCTION COMPANY LIMITED 4TH DEFENDANT

RULING

1. Before me is an application dated June 7, 2022 where the plaintiff seeks orders that Hafaya Construction Company Limited be made a 4th defendant in this suit; that orders be issued restraining the defendants and the proposed 4th defendant from interfering with the suit premises being LR No 1870/1/451 and LR No 1870/1/452 and that the applicant be allowed to amend their pleadings accordingly. The applicant also prays for costs.
2. The grounds in support of the application are that the 4th defendant has issued an illegal and unlawful notice to the plaintiffs' employees guarding the suit premises to vacate that land, yet the plaintiffs are the legal and registered owners of the suit premises and have been in possession of the same since the time of purchase in 1981 and 1983 respectively.
3. The applicant avers that it would be in the interest of justice to issue the orders sought herein to safeguard the plaintiffs' interest and right to his property.



4. I perused an affidavit of service dated October 11, 2022 which indicates that the respondents including the proposed 4th defendants were all duly served, but none had filed a response to the application as at October 18, 2022. However, the proposed 4th defendant expressed its desire to oppose the application of which the court indulged them. To this end, the said party has filed a replying affidavit dated October 25, 2022 sworn by its executive director one Hassan Mohamedd Abdi.
5. The deponent avers that they are the registered owners of the suit parcels LR No 1870/1/620 and LR No 1870/1/621 and that was the reason as to why they issued a notice to the plaintiffs to vacate the said land. The deponent has gone ahead to give a detailed account of their claim of ownership of the suit parcels emphasizing that the electronic searches revealed that they are the owners of the said land. He also added that they are the ones who pay the land rent and land rates relating to the suit parcels. As such they have every legal right to evict the plaintiff from the land.
6. I have considered all the arguments raised herein. This is a situation whereby each protagonist is waving a title to assert their claim of ownership of the suit parcels. The proposed party has however issued an eviction notice against the plaintiffs. I find that the restraining orders sought by the plaintiffs are in the realm of injunctive orders.
7. In the case of *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others [2016] eKLR*, the court held that;

“An injunction is an equitable remedy, meaning the court hearing the application has discretion in making a decision on whether or not to grant the application. The court will consider if it is fair and equitable to grant the injunction, taking all the relevant facts into consideration.” .
8. In the case of *John Obare v Moses Adagala [2016] eKLR*, the court stated that;

“Even though the court is not expected at this interlocutory stage to make conclusive findings of facts and the law, the evidence so far availed shows there is need to maintain the status quo obtaining at the stage of filing these proceedings to enable the status of the suit property, be it plot 399A, 399D or 399 remains unchanged as the parties litigate on the issues before the court”.
9. Similarly, this court cannot deal with conflicted issues of facts at the interlocutory stage, thus the court cannot delve into the question of the validities of the titles in this application. I also find that the proposed party can only articulate his claims of ownership of the suit property when he is a party to these proceedings.
10. In the circumstances, I find that it is only fair and just that status quo be maintained until the substantive issues in dispute are determined. I therefore find that the application dated June 7, 2022 is merited, the same is allowed but the costs thereof shall abide the outcome of the suit. The amended plaint is to be filed and served along with summons to enter appearance within 14 days.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N MBUGUA

JUDGE

In the presence of:-



Were for plaintiffs

Allan Kamau for defendant

Kurgat holding brief for Peter Wanyama for Proposed 4th defendant

Court assistant: Eddel

