



REPUBLIC OF KENYA



Mbaru & 204 others v Kenya Scouts Association (Environment & Land Case E104 of 2024) [2025] KEELC 4572 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4572 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E104 OF 2024**

**SM KIBUNJA, J
JUNE 18, 2025**

BETWEEN

**AQUILINA NYAMVULA MBARU 1ST PLAINTIFF
SIFEMOYO MWAYAYA 2ND PLAINTIFF
NATASHA ORANDO NAMEMBA 3RD PLAINTIFF
CATHERINE MWEBERI & 201 OTHERS & 201 OTHERS & 201
OTHERS 4TH PLAINTIFF**

AND

THE KENYA SCOUTS ASSOCIATION DEFENDANT

RULING

1. The plaintiffs seeks vide the notice of motion dated 10th December 2024, for inter alia temporary injunction restraining the defendant, their servants, agents, employees and or anybody acting on their behalf from evicting, and or demolishing, disposing, alienating and or interfering in any way with the parcel of land being plot No. 4820/V1/MN, suit property, situated at Miritini, Rabai Ndogo area within Mombasa County, pending the hearing and determination of this suit. The application is based on the three (3) grounds on its face, and supported by the affidavit of Natasha Orando Namemba, 3rd plaintiff, sworn on the 10th December 2024, inter alia deposing that the plaintiffs reside and work for gain on the suit property; that most of the plaintiffs bought their portions of land from Mramba Saidi Mramba, the suit property's registered owner; that the defendant has issued the residents on the suit property with notice to vacate that was published on the Standard Newspapers; that upon conducting a search over the suit property, the plaintiffs discovered the defendant also holds a title deed to the land and they are at a loss as to who between him and Mramba Saidi Mramba owns it; that unless a temporary injunctive order is issued, the plaintiffs will suffer irreparable loss if the defendant evict them.



2. The application is opposed by the defendant through the replying affidavit of Moses Ochieng Danda, National Executive Commissioner, sworn on the 20th January 2025, inter alia deposing that the plaintiffs have not met the conditions for issuance of injunction order; that though the plaintiffs claim to have bought portions of the suit property from Mramba Saidi Mramba, who is not a party in this suit, they have not produced the sale agreements or evidence of transfer; that the sale agreement annexed as “NON3” indicates the purported purchaser is Martin Masaja Nyongesa, who is not a plaintiff herein, and does not mention the suit property; that the title document the plaintiffs have relied on is not authentic as the suit property No. 4820/V1/MN is registered under title No. CR. 82371 and not CR. 70985 as alleged by the plaintiffs; that the eviction notices were legally issued on residents on Land Reference No. 4820/VI/MN registered under Title No. CR. 82371, measuring 6.31 hectares following a consultative meeting with residents and government representatives; that during the consultative meeting, the residents were given opportunity to lodge their claim of ownership but none did; that the eviction notices in Swahili and English were physically served upon all the unlawful occupants on the suit property, posted in public places within the land, published in two newspapers with national circulation, served upon the County Commissioner and Officer in charge of Police; that as the plaintiffs have failed to prove ownership of the suit property, which is evidently registered in the name of the defendant, the prayers they seek cannot be granted and their eviction should be allowed to proceed.
3. The court on 11th December 2024 certified the application urgent and ordered parties to maintain status quo, and on 14th January 2025 issued directions on filing and exchanging replies and submissions. Subsequently, the learned counsel for the plaintiffs and defendant filed their submissions dated 3rd March 2025, and 5th March 2025, respectively, which the court has considered.
4. The issues for the court’s determinations are as follows:
 - a. Whether the plaintiffs have met the threshold for an order of temporary injunction to issue against defendant.
 - b. Who pays the costs?
5. The court has considered the grounds on the application, affidavit evidence, submissions by the parties’ counsel, the pleadings filed and come to the following determinations:
 - a. It is trite that for the applicants to convince the court that they deserve the injunction order sought, they must satisfy the three prerequisite conditions set in the case of *Giella versus Cassman Brown & Company Limited* [1973] E.A 385. The conditions are:
 - i. Establish a prima facie case with a probability of success.
 - ii. Demonstrate that they will suffer irreparable loss/injury that would not adequately be compensated by an award of damages if the injunction order sought is not granted.
 - iii. Show that should the court be in doubt of the above two conditions, that the balance of convenience tilts to their favour.
 - b. The Court of Appeal in the case of *Mrao versus First American Bank of Kenya Limited & 2 Others* [2003] eKLR, stated as follows on what constitutes a prima facie case:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has



apparently been infringed by the opposite party so as to call for an explanation from the latter....a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.”

The plaintiffs have deposed and submitted that they had bought their portions of land from one Mramba Saidi Mramba, the registered proprietor of land parcel No. 4820/V1/MN, registered under title No. CR. 70985. That the injunctive order sought should issue as the defendant is likely to carry out the eviction threats thereby making them suffer irreparable loss/injury.

- c. The defendant has in their replying affidavit and submissions pointed out that the sale agreements attached to the supporting affidavit do not belong to any of the plaintiffs in this suit, and have not indicated that they were over portions of the suit property herein. The defendant has submitted that the said Mramba Saidi Mramba, whom the plaintiffs allege is the registered proprietor of the suit land, and from whom they claim to have bought their portions of land from, is not a party in this suit, and has not come forward to defend his ownership. The defendant further submitted that as the plaintiffs have not proved any legal right over the suit property, they cannot claim any infringement of their rights, and that a right cannot arise out of an illegality. On this proposition, the learned counsel relied on the case of Margaret Njambi Kamau versus John Mwatha Kamau & Another [2019] eKLR, where the court was considering the matter of occupation of the suit property and held that;

“ ... It is not a blanket principle that if a person is in occupation, then the court should find that a prima facie case has been established. The court cannot be used to deodorize illegal or unprocedural occupation of a person's land...”

And, submitted that the plaintiffs have failed to establish the prima facie case test.

- d. The plaintiffs have annexed two sale agreements to their supporting affidavit, both marked “NON-3” in the names of Martin Mabaja Nyongesa and Bungare Hamedi Sheria respectively. I have perused the first sale agreement, with Martin Mabaja Nyongesa as purchaser. It has a date of 19th September 2018 at the top left corner and starts as follows;

“We the family of Mramba have agreed to give a parcel of land measuring 30 by 26 ft.....”

Under the part for the seller, it is indicated as signed “Saidi Mramba Saidi” and another. I have also perused the second sale agreement of Bungare Hamedi Sheria. It starts as follows;

“Saidi Mramba and his fellow relatives has agreed to give a parcel of land measured 30 ft by 37ft...”

Under the space for the seller, it is indicated as signed by “Saidi Mramba, James Baya and Mramba Saidi.” Though, the plaintiffs claim the sale agreements were over portions of land parcel No. 4820/V1/MN, that is registered as CR. 70985, I have noted there is no reference of the said parcel on the two documents. There is therefore no connection established between the subject matter on the two sale agreements and land parcel No. 4820/V1/MN is registered under title No. CR. 70985



or 82371, the suit property. I therefore agree with the defendant that the plaintiffs have failed to establish the first test of a prima facie case with a probability of success. The mere fact of the plaintiffs being in occupation of portions of the suit property, that they appear not to have recognisable legal or beneficial interests over, without more, does not amount or constitute a prima facie case.

- e. The Court of Appeal addressed the second test of irreparable loss/injury in the case of *Nguruman Limited versus Bonde Nielsen & 2 Others* (2014) eKLR, and held that:

“On the second factor, the applicant must establish that he might otherwise suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot adequately be compensated by an award of damages. An injury is irreparable where there is no stand on which the amount can be measured with reasonable accuracy or the injury or harm is of such a nature that monetary compensation of whatever amount, will never be adequate remedy.”

The defendant has submitted that the plaintiffs have not discharged their duty to show that they will suffer irreparable loss/injury if the injunction order sought is not granted. That the only factual materials presented are the two sale agreements attached to the supporting affidavit that do not concern any of the plaintiffs and are only for payments of Kshs.80,000 and 70,000 which amounts are not colossal. I have perused the affidavit evidence and apart from the eviction notice, over land reference No. 4820/V1/MN under certificate of title No. CR. No. 82371, that has been admitted to have been published on newspapers and physically served upon those illegally on the suit property among others, there is no other evidence presented to the court upon which a finding that the plaintiffs would suffer irreparable loss/injury if the injunctive order sought is not granted would be based on.

- f. The three conditions, which are to be established as a prerequisite to injunctive order being issued, are to be determined sequentially. The Court of Appeal pronounced itself on this in the case of *Nguruman Limited versus Bonde Nielsen & 2 Others* [supra], and stated as follows:

“...these are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially..... If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”

The court has already made a finding that the plaintiffs have failed to establish the first test of establishing a prima facie case with a probability of success. That finding would have been sufficient to determine the application. The court however proceeded and addressed itself to the second test of irreparable loss/injury, and found the plaintiffs have again failed to establish it. That as from the affidavit evidence adduced so far there is no privity of contract between the plaintiffs and



the defendant, and Mramba Saidi Mramba, from whom they claim the purchased portions of land from, is not a party in this suit, the balance of convenience tilts against issuing the injunctive order sought.

- g. Under section 27 of *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where the court for good cause orders differently. In this instant, as the plaintiffs have failed in their application which the defendant has successfully opposed, then they shall pay the costs.
1. Flowing from the foregoing conclusions, the court find and orders as follows:
 - a. That the plaintiffs' notice of motion dated 10th December 2024 is without merit and is hereby dismissed.
 - b. The plaintiffs will pay the defendant's costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 18TH DAY OF JUNE 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Plaintiffs : Mr Okanga

Defendant : M/s Achieng for Ouma

Shitemi-Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

