



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC LC CASE NO. 950 OF 2014

KUKAM LIMITED..... PLAINTIFF/APPLICANT

VERSUS

KENYA NATIONAL HIGHWAYS AUTHORITY..... 1ST
DEFENDANT/RESPONDENT

NATIONAL LAND COMMISSION..... 2ND
DEFENDANT/RESPONDENT

ATTORNEY GENERAL..... 3RD
DEFENDANT/RESPONDENT

AND

THE CABINET SECRETARY, MINISTRY OF LANDS, HOUSING
AND URBAN DEVELOPMENT.....INTENDED 4TH
DEFENDANT/RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 13th March 2025 brought under Articles 40 and 48 of the Constitution 2010, Sections 1A, 1B, and 3A of the Civil Procedure Act, Order 1 Rule 10 and, Order 40 Rules 1 and 2 of the Civil Procedure Rules, in which the Applicant seeks the following orders:

a) Spent.

b) THAT the Honourable Court be pleased to issue an order for joinder of the Intended 4th Defendant/Respondent as 4th Defendant in this matter.

c) Spent.

d) THAT pending the hearing and determination of this suit an order of temporary injunction be issued restraining the Respondents whether by themselves, their servants, agents or any person claiming under them or under their instructions from entering, remaining upon cultivating developing altering in any form whatsoever and dealing in any manner with the parcel of land known as NAIROBI/BLOCK 72/3081.

e) THAT in the alternative to prayer 3 and 4 above, the Honourable court be pleased to issue an order of status quo ante pertaining to the occupation and/or possession of the suit property.

f) THAT the Costs of the application be provided for.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Rahab Karei Mukima sworn on even date.

THE APPLICANTS' CASE

3. The deponent averred that the Applicant is the registered proprietor of the suit property, having been allocated the same by the 2nd Defendant upon surrendering property known as L.R. No. 209/14053.
4. She asserted that the Applicant possesses the suit property, despite the demolition of its properties by the 1st Defendant.
5. She stated that on 10th March, 2025, the Intended 4th Defendant entered the suit property with bulldozers and began excavation activities on the property. The deponent is apprehensive that the Applicant would be prejudiced if the orders sought are not granted.
6. She maintained that the joinder of the Intended 4th Defendant is necessary for the effective determination of this case.

THE 1st RESPONDENT'S CASE

7. The 1st Respondent filed grounds of opposition dated 28th April 2025 in response to the application. The 1st Defendant contended that the application is misconceived, citing the Court's decision in **Nairobi ELC No. 561 of 2014, Dir.**

Moses Oringo Lango v. Attorney General & 3 others,

which determined that the suit property is public land.

8. Based on the foregoing, it was contended that the application lacks merit and ought to be dismissed with costs.

THE RESPONSE

9. In a further affidavit dated 5th May 2025, the deponent asserted that the Applicant was not a party to ELC No 56 of 2014 and only became aware of it when the 1st Defendant brought it up during this suit. She maintained that the dispute in the current suit is distinct from the other suit, as she had been allocated the suit property, while the Plaintiff in the other case had purchased the same.
10. The deponent argued that the Applicant is entitled to have its case heard on its merits.
11. The application was canvassed by way of written submissions.

THE APPLICANT'S SUBMISSIONS

12. The Applicant filed its submissions dated 5th May 2025.
13. On behalf of the Applicant, Counsel outlined the following issues for the court's determination: -

a) *Whether the Intended 4th Defendant should be joined as a 4th Defendant?*

b) *Whether this court should issue injunctive orders and/or orders of status quo over the suit property?*

14. On the first issue, Counsel submitted that the 4th Defendant is a necessary party as its actions in interfering with the suit property are central to the dispute herein. It was submitted that the Plaintiff intends to pursue a claim for damages against the 4th Defendant. Consequently, it is necessary to join it in these proceedings. To support this argument, reliance was placed on the case of **Joseph Njau Kingori v Rober Maina Chege & 3 others (2002) eklr and Joshi & 2 others v Kirui & another.**

15. Regarding the second issue, Counsel submitted that the Applicant had met the threshold for the grant of an injunction. It was submitted that the Applicant had established a prima facie case since it is the registered owner of the suit property. It was further submitted that the Applicant has demonstrated that it will suffer irreparable harm since an award of damages cannot compensate for the threats of eviction. Counsel maintained that the balance of convenience tilts in its favour.

THE 1ST DEFENDANT'S SUBMISSIONS

16. The 1st Defendant filed its submissions dated 18th June 2025.
17. On behalf of the 1st Defendant, Counsel argued that the application and the suit are res judicata because the judgment issued on 4th July, 2022, in ELC No. 561 of 2014 was binding on the Plaintiff and the 1st - 3rd Respondents, who were parties to the case. It was further argued that the main issue in this suit is whether the suit property is public or private land, which has already been determined in the judgment, and therefore it cannot be relitigated.

ANALYSIS AND DETERMINATION

18. Having considered the application, the grounds of opposition and rival submissions, the issue that arises for determination is whether the Plaintiff is entitled to the orders sought.
19. The Applicant seeks to join the intended 4th Defendant on the grounds that it will assist the court in determining the dispute herein.
20. The law governing the joinder of parties is based on Order 1 Rule 10(2) of the Civil Procedure Rules, which states as follows;

“The Court may at any stage of the proceedings, either upon, or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant or whose presence before the court may be necessary to enable the court to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

21. In the case of Civicon Limited vs Kivuwatt Limited & 2 others (2015) eKLR, the Court of Appeal referred to O’Hare & Hills Civil Litigation 7th Edition where the authors stated as follows: _

“One cannot be added as a Plaintiff unless one gives one’s consent in writing. In contrast, anyone can be joined as a Defendant even against his wishes. However, no person can be a Defendant unless the Plaintiff claims some relief, even if only a declaration against him. The general rule of practice is that the Plaintiff is “dominus litis.” This means that he is entitled to choose the Defendants against whom he wishes to pursue his claim for the relief or remedy he seeks and that he cannot be compelled to proceed

against other persons whom he does not desire to sue.”

22. The Applicant asserts that it is the registered proprietor of the suit property. It argued that on 10th March 2025, the Intended 4th Respondent entered the suit property and began excavating. In this regard, she produced photographs to support the claim. The Applicant contended that it intends to file a claim for damages against the intended 4th Defendant.

23. Based on the material placed before me, I find that the Applicant has demonstrated that the Intended 4th Defendant is a necessary party to these proceedings.

24. The Applicant seeks an injunction restraining the Respondent from interfering with the suit property pending the hearing and determination of the suit.

25. The principles applicable in an application for an injunction were laid down in the celebrated case of **Giella vs Cassman Brown & Co Ltd 1973 EA 358**, where the court held that in order to qualify for an injunction:-

✓ ***First the Applicant must show a prima facie case with a probability of success.***

- ✓ ***Secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.***
- ✓ ***Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.***

26. The first issue for determination is whether the Applicant has established a *prima facie* case with a probability of success.

27. A *prima facie* case was defined by the Court of Appeal in **Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others (2003) eKLR** as follows;

“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 as to call for an explanation or rebuttal from the latter.”

28. The Applicant claims that it is the registered proprietor of the suit property, having been allocated the same by the 1st Defendant, after surrendering its property. The 1st Defendant,

on the other hand, maintained that the court had declared the suit property to be public land. Based on the material placed before me, it is clear that the ownership of the suit property is contested.

29.

that will be canvassed at the trial. The court is aware that at the interlocutory stage, it is not required to make any definitive conclusion on the matters that are in controversy.

30.

(1988) KLR, the court held that:-

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties cases.”

31.

Bank of Kenya Ltd, NBI HCCC NO 1118 of 2002, the court held that;

“In an interlocutory application, the court is not required to determine the very issues which will be canvassed at the trial with finality. All the court is entitled to at this stage is whether the Applicant is entitled to an injunction sought on the usual criteria.”

32. Based on the evidence placed before me, this court finds and holds that the Applicant has established a prima facie case with a probability of success.

33. The Applicant asserted that it possesses the suit property and would suffer irreparable harm if it were evicted from the suit property. The court is convinced that the Applicant would suffer irreparable harm that cannot be compensated with damages if the suit property is not preserved.

34. On the issue of balance of convenience, the court has to weigh the hardship to be borne by the Applicant by refusing to grant the injunction, against the hardship to be borne by the Respondent by granting the injunction.

35. In the case of **Virginia Edith Wambui v Joash Ochieng Ougo Civil Appeal NO 3 of 1987 eKLR**, the Court of Appeal held that:-

“The general principle which has been applied by this court is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided on a trial.”

36. Looking at the evidence presented by the parties herein, I find that the balance of convenience tilts in favour of preserving the suit property,

37. In the end, I find that the application dated 13th March 2025 is merited and the same is allowed in the following terms:-

a) The Intended 4th Defendant/Respondent is hereby joined as the 4th Defendant in this matter.

b) An order of status quo ante be and is hereby granted pertaining to the occupation and/or possession of the suit property.

c) The Applicant is awarded the costs of the application.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 31st DAY OF OCTOBER, 2025.

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HON. T. MURIGI
JUDGE

IN THE PRESENCE OF: -

Mutunga for the Plaintiff

Obok for the 1st Defendant

Allan Kamau for the 3rd Defendant.

Ahmed - Court Administrator

ORIGINAL