Saleri v Chief Land Registrar & another (Land Case E009 of 2025)
[2025] KEELC 5792 (KLR) (Environment and Land) (30 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5792 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ENVIRONMENT AND LAND

LAND CASE E009 OF 2025

EK WABWOTO, J

JULY 30, 2025

BETWEEN

JACOB SALERI ..... PLAINTIFF

AND

CHIEF LAND REGISTRAR ..... 1ST DEFENDANT

DIRECTOR LAND ADJUDICATION NAIROBI ..... 2ND DEFENDANT

RULING

1. This Ruling is in respect to the Plaintiff/Applicant's application dated 14th May 2025 which seeks temporary injunctive orders against the Respondents from evicting, selling, alienating or dealing in any manner with Plot Nos. Taveta/Taveta Scheme Phase I/595, 957, 599, 601, 602, 603, 604, 605, 606, 1054, 1055, 1056, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1101, 1102, 1103, 1106, 1125, 1126, 1130, 1133, 1137, 1138, 1141, 1142 and 1143 pending the hearing and determination of this suit.

2. The application was premised on the grounds on the face of it and the supporting affidavit sworn by the Applicant on 14th May 2025.

3. It was deposed that the Applicant together with Vincent Juma Loseghu bought Plot Nos. 706 – 712, 736, 737 and 812 from John Shiundu Okumu on 19th December 2000 while John Shiundu Okumu had purchased the same from Director, Agro Development Company Ltd. The same was 20 hectares in size.

4. It was averred that later the Respondents allocated the suit plots and issued title deeds to other parties who were not part of the Plaintiff's family members and are unknown to them and that the said strangers have no right to occupy the same.

5. The application was opposed by the Respondents who filed grounds of opposition dated 20th June 2025. It was contended that no prima facie case has been established on ownership of the various parcels, the Applicant has approached the court with unclean hands, the laid down statutory proceedings in the *Land Adjudication Act* have not been followed and no consent of the land adjudication officer was sought prior to the institution of this suit.

6. During the plenary hearing of the said application, Learned Counsel Mr. Odhiambo made oral submissions on behalf of the Applicant while Learned Counsel Mr. Penda submitted on behalf of the Respondents.

7. The Applicant submitted that no evidence has been demonstrated by the Respondents that the suit parcels is under adjudication and hence the issue of the consent from the Land Adjudication Officer does not arise.

8. It was also submitted that the persons who were allocated the suit parcels had been notified of this proceedings through advertisement but none had come to court and hence their evidence can't be considered. No prejudice will be suffered if the suit parcels are preserved and the court should allow the application as prayed.

9. The Respondents on the other hand submitted that there was no evidence to confirm that the initial allotees were granted the suit parcels and hence no prima facie case has been established. The injunction if granted will affect many individuals not party to the suit and public interest should be considered.

10. Having considered the application, rival affidavits filed and oral submissions made by Learned Counsel Mr. Odhiambo for the Applicant and Learned Counsel Mr. Ponda for the Respondents, the main issue for consideration is whether the Applicant has made a case for grant of the temporary injunction order sought.

11. The remedy for injunction being an equitable remedy is a discretionary remedy to any court. The discretion must be exercised judiciously. This is what every court should bear in mind when dealing with such kind of an application. In the cases of *Kahoho v Secretary General*, EACJ Application No. 5 of 2012 and Daniel Kipkemoi Siele v Kapsasian Primary School & 2 Others (2016) eKLR, courts held that the grant or not of an order of injunction is upon the discretion of the court which discretion must be exercised judiciously. In *Farah Awad Gullet v CMC Motors Group Limited* (2018) eKLR, the Court of Appeal repeated the same position and went on to state that it means it is ...

> " ..... without caprice or whom and on sound reasoning".

12. In order for a party to succeed in an application for a temporary injunction, he/she has to pass the test that was set out in the case of *Giella v Cassman Brown* (1973) E.A 358. The test has three limbs to be satisfied. These are:-

    a. Whether the Applicant has established a prima facie case.

    b. whether he or she would suffer irreparable loss that may not be compensated by damages.

    c. That if the court is in doubt, it may rule on a balance of convenience.

13. In *Mrao Ltd. v. First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 a definition for "prima facie case" in civil cases was fashioned in the following words:

> " In civil cases, a prima facie case is a case in 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 to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but 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."

14. In the instant case, it is not disputed that the Applicant is in possession of the suit parcels, the Applicant produced before this court the sale agreement and further provided evidence confirming that he fenced the said plots upon purchase and in view of the foregoing this court is satisfied that a prima facie case has been established by the Applicant.

15. In view of the foregoing, it is the finding of this court that the said application is merited and the following orders are hereby issued:-

    a. That pending the hearing and determination of this suit, a temporary injunction be and is hereby issued the Respondents, whether by themselves or their servants and/or agents from evicting, interfering with the Applicant's quiet enjoyment of and/or selling, alienating or in any manner dealing with the Plot Nos. Taveta/Taveta Scheme Phase I/595, 957, 599, 601, 602, 603, 604, 605, 606, 1054, 1055, 1056, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1101, 1102, 1103, 1106, 1125, 1126, 1130, 1133, 1137, 1138, 1141, 1142 and 1143 situate in Taveta Sub-County, Taita Taveta County.

    b. This order to be served by way of substituted service within 14 days from today.

    c. The Respondents to file and serve their defence, witness statements and any other documents they intend to rely on during trial within 21 days from the date of service of the Newspaper Advertisement.

    d. The matter be listed for pre-trial conference on the 23rd September 2025.

    e. Each party to bear own costs of the application.

    It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JULY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

N/A for the Plaintiff/Applicant.

N/A for the Defendant/Respondents.

Court Assistant: Mary Ngoira.