

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KAKAMEGA
ELC CASE NO. E037 OF 2022

ANNA KABOI NJENGA.....PLAINTIFF

VERSUS

STEPHEN KIMUTAI CHUMBA.....1ST
DEFENDANT

THE LAND REGISTRAR, KAKAMEGA2ND
DEFENDANT

AND

ABRAHAM GIMODE AGOLA.....1ST INTERESTED
PARTY

DANIEL SIMIYU WAKHUNGU.....2ND IN TERESTED
PARTY

RULING

Introduction

1. Before court is a Notice of Motion dated 5th November, 2024 filed by the interested parties herein seeking the following orders:

a) Spent.

b) That ex parte status quo orders be issued as prayed for pending hearing and determination of this suit.

c) That any other of such similar applications and preceding of injunctions touching the same parcel of land No. Kakamega/Soy/219 in the Kakamega Magistrate Law Court MC L &E NO. E253 OF 2023 and any other court be stayed pending hearing and determination of this case No. E037 OF 2022 with parties to bear their own costs.

d) That costs be provided for.

2. The application is premised on the supporting affidavit sworn by the applicants. The applicants' case is that the 1st defendant has been causing havoc on the suit property after nullification of registration of the new titles, vide Succession Cause No. 222 of 1992, having vacated the suit property 30 years earlier. That the 1st defendant may interpret this court's ruling of 23rd September 2024 to mean that he has been allowed to enter, encroach, trespass, subdivide, charge, mortgage, lease or use a portion of the suit property measuring 16.8 acres pending

determination of the suit, which will render the suit nugatory.

3. The application was opposed. The 1st defendant/respondent filed grounds of opposition dated 11th February 2025. She stated that the applicants had not met the threshold for grant of orders sought and that they had not ascertained their interest in the suit property. Further that the application was frivolous and the applicants were guilty of laches.
4. The application was disposed by way of written submissions. On record are submissions filed by the applicants dated 20th March 2025 and submissions filed by the 1st defendant/respondent dated 23rd March 2025; both of which the court has duly considered.

Analysis and determination.

5. The court has carefully considered the application, supporting affidavit, annexures thereto as well as the grounds of opposition together with submissions. The applicants sought two prayers. A prayer for grant of orders of status quo and another prayer for stay of

injunction applications and proceedings in Kakamega MC ELC E253 OF 2023 and in any other court touching on the suit property. Therefore, the issue for determination is whether the applicant deserves the orders sought.

6. On the prayer for stay of injunction applications and proceedings in Kakamega MC L &E Case No. E253 OF 2023 or in any other court, I note that proceedings, applications or decisions in that case are not subject of the instant suit and the applicant has not invoked this court's jurisdiction to interrogate the proceedings in that case. In exercising its jurisdiction in determining the instant suit, this court is exercising its original jurisdiction and not appellate jurisdiction in regard to proceedings or decisions in Kakamega MC L &E Case No. E253 OF 2023, and therefore this court lacks the jurisdiction to stay proceedings and applications in that case, hence that prayer is declined.

7. Status quo orders are in the nature of an injunction in so far as they stop the interference with the suit property, by the parties.

8. Order 40 Rule 1 of the Civil Procedure Rules provides for the power of the court to grant temporary injunction where an applicant demonstrates that the subject matter of the suit is at risk of waste, damage, alienation, disposal or sale in execution of a decree; and that if an injunction is not granted, there would likely be a delay or obstruction in the execution of any decree that may eventually be passed in favour of the plaintiff.
9. It is trite that to obtain a temporary injunction, an applicant must demonstrate a *prima facie* case with chances of success; that they stand to suffer irreparable loss that may not be atoned in damages and where the court is in doubt, it ought to decide on a balance of convenience. (**See Giella v Cassman Brown [1973] EA 158**).
10. In the case of **American Cyanamid Co vs. Ethicon Limited 1975 AAER 504**, the court stated elements to be satisfied before grant of a temporary injunction as follows;
- a) There must be a serious/fair issue to be tried;**

b) Damages shall not be an adequate remedy

c) The balance of convenience lies in favour of granting or refusing the application.

11. A *prima facie* case was described in the case of **Mrao Ltd v First American Bank of Kenya and 2 Others (2003) KLR** as follows;

“A *prima facie* case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

12. In the instant case, the applicants sought status quo orders on the basis that the 1st defendant may interpret the orders of 23rd September 2024 as allowing him to interfere and dispose of the suit property. In my view, that is merely speculation on the part of the applicants. The record is clear that on 23rd September 2024, this court dismissed the plaintiffs’ application dated 2nd August 2022 in which they sought a temporary injunction against the 1st defendant. This court cannot issue orders

on the unjustified apprehension that the 1st defendant will misinterpret the said earlier order, as the order is clear. Besides, nothing in the applicants' supporting affidavit demonstrated deserving orders of temporary injunction.

13. The applicants failed to establish a *prima facie* case with any likelihood of success. In the absence of a *prima facie* case, the questions of irreparable injury and scale of convenience becomes moot.

14. Ultimately, I find no merit in the application dated 5th November 2024 which I hereby dismiss with costs to the 1st defendant.

15. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA
VIRTUALLY/IN OPEN COURT THIS 21ST DAY OF
JANUARY 2026 THROUGH MICROSOFT TEAMS
VIDEO CONFERENCING PLATFORM**

**A. NYUKURI
JUDGE**

In the presence of;

1st Interested Party in person

No appearance for the 2nd Interested Party

No appearance for the plaintiff

No appearance for the defendant

Court Assistant- Delphine