REPUBLIC OF KENYA

IN THE ENVIROMENT & LAND COURT AT NAIROBI

ELCL APPEAL No. 224 of 2024

MUSA SAID HASSAN..1st APPELLANT

FARAH MUSA SAID..2nd APPELLANT

VERSUS

BRIAN CEDRIC OLOO; MAKACY KEVIN OTIENO ODONGO LUCY NJERI KAMAU (Suing as Chairman, Secretary & Treasurer respectively of East Sidaz Self Help Youth Group.......................RESPONDENTS

(Being an appeal from the Ruling & Order of the Chief Magistrates Court at Milimani Environment & Land Hon. A. Mukenga Principal Magistrate, made and or delivered on 11th December 2024, in MCELC/E431 of 2024)

BETWEEN

BRIAN CEDRIC OLOO; MAKACY KEVIN OTIENO ODONGO LUCY NJERI KAMAU (Suing as Chairman, Secretary & Treasurer respectively of East Sidaz Self Help Youth Group.............................PLAINTIFFS

VERSUS

ORIGINAL

MUSA SAID HASSAN...1st DEFENDANT

FARAH MUSA SAID...2nd DEFENDANT

JUDGMENT

Background

1. Before this court for determination is an appeal arising from the decision of the Chief Magistrates Court at Milimani Environment & Land on the 11th December, 2024.

2. By way of brief background, the Respondents/Plaintiffs in the suit, filed, contemporaneously with the Plaint an application dated 20th September, 2024 seeking injunctive orders against the Appellants/Defendants therein restraining them from any interference with the parcel of land known as LR - 36/IV/R pending the hearing and determination of the suit and directions that the OCPD Buruburu Police Station, assist in compliance and enforcement of the aforesaid orders.

3. The Respondents case was that East Sidaz Self Help Group is the registered proprietor of an absolute interest in all that parcel of land known as LR-36/IV/R measuring approximately 0.06 hectares and situated in Eastleigh.

4. It was averred by the Plaintiff/Respondent that the group was issued with an allotment letter, paid the requisite stand

ORIGINAL

premium, annual rent, survey fees, architectural fees and approval charges and took possession of the parcel where it erected a temporary structure for purposes of carrying out garbage disposal business.

5. According to the Respondents, the suit property was subsequently invaded by third parties allegedly acting at the behest of the Appellants. These persons, it was averred, forcefully entered the land, burnt down the temporary structure erected thereon and commenced construction of an iron sheet fence around the property. In response, the Appellants, directors and shareholders of Tanad Transporters Limited, maintained that the company is the registered owner and occupier of L.R No 36/IV/107 having been allotted the same.

6. The Appellants averred that a 99-year lease in favour of the company was issued by the City County of Nairobi, duly gazetted and formally registered after payment of the requisite registration fees and that a survey plan and deed plan were also prepared, culminating in the issuance of a certificate of title in the company's name on 2nd February 2009.

7. The Appellants further contended that ownership of the property had already been the subject of litigation before the Environment and Land Court, the Court of Appeal and the Supreme Court, all of which determined the matter in

ORIGINAL

favour of Tanad Transporters Limited. They maintained that the company fenced the property pursuant to the approval granted by the County Government of Nairobi on 24th May 2024.

8. They urged that the Respondents had no lawful claim to the property because it only relied on a letter of allotment, whereas the property is registered in the name of, and occupied by Tanad Transporters Limited.

9. Vide its determination made on the 11th December, 2024, the court found that the Respondents had established their case and granted them the injunctive orders sought. Aggrieved by the foregoing, the Appellants have filed a memorandum of appeal dated 17th December, 2024 appealing against the entirety of the ruling on the grounds that:

i. ***The learned Magistrate erred in law and in fact by finding that the Respondent has proved to be in possession of the suit premises, without any evidence to support such a finding, hence arrived at a wrong conclusion.***

ii. ***The learned Magistrate erred in law and misdirected herself by finding, that the Respondent had proved a prima facie case, based on the strength of an allotment letter issued in 1999, while the Respondent had not***

ORIGINAL

title documents, hence arrived at an erroneous decision.

iii. ***The learned Magistrate erred in law and in fact by finding that the Respondent had a prima facie case based on a letter of allotment, which was contrary to the decision of the Supreme Court's decision in Torino Enterprises Limited Vs Hon. Attorney General (SC Petition No. 5 (E006) 2022) which held that an allotment letter is not a title deed and cannot confer an interest in land, and which was binding on the lower court.***

iv. ***The learned Magistrate erred in law and in fact by finding that the Respondent had been in continuous occupation of the suit property, despite the fact that the Appellant was the one in actual possession, and the Respondent were seeking entry into the suit premises through the injunction.***

v. ***The Magistrate erred in law and in fact and misdirected herself by finding that the Appellants authority to take possession was cancelled, without any evidence to support such a finding.***

vi. ***The learned Magistrate erred in law and in fact in finding that the Respondent had***

ORIGINAL

demonstrated having a bona fide question regarding the ownership of the suit property, while the Appellant holds a title deed and the Respondent a letter of allotment issued in 1999, but have no title, hence arrived at a wrong decision.

vii. ***The learned Magistrate erred in law and in fact by failing to consider the balance of convenience, which heavily tilted in favor of the Appellant who has a title deed and has been in possession of the suit property, hence arrived at a wrong conclusion.***

viii. ***The learned Magistrate erred in law and in fact entertain the application while the value of the suit property was way above her pecuniary jurisdiction, hence the court ought to have downed its tools.***

ix. ***The learned Magistrate erred and misdirected herself in law and in fact by finding that the Respondent would suffer irreparable loss, while they had never been in possession of the suit property, and therefore stood to suffer no loss.***

x. ***The learned Magistrate erred in law and in fact by issuing an injunction against the true owner of the property - the Appellant in favor of the***

ORIGINAL

Respondent, despite their lack of title document, hence the decision is so perverse and cannot be allowed to stand.

xi. ***The learned Magistrate erred in law and in fact by failing to appreciate sufficiently, and/or at all, that a dispute regarding the ownership of the suit property had been litigated and settled in the Supreme Court, hence the same could not be re-litigated.***

10. The Appellants seek that:

i. ***This Appeal be allowed.***

ii. ***The Ruling and Order of the Chief Magistrates Court at Nairobi, made and/or delivered on 11th December 2024, be set aside and substituted with an Order dismissing the Respondent's Application for injunction and the Respondent's entire suit in the lower court.***

iii. ***The costs of this Appeal and costs in the lower court be awarded to the Appellant.***

iv. ***Such other and/or further orders this court deems fit and just to grant.***

Submissions

4. The Appellants' counsel filed submissions on 10th February 2026. Counsel submitted that the trial Magistrate erred in

ORIGINAL

finding that the Respondents had been in occupation of the suit property despite there being no evidence to support such a finding and that the Appellant had demonstrated possession through its title deed, approval from the County Government to erect a fence around the property, and evidence of prior litigation confirming its ownership.

5. It was urged that the Magistrate also wrongly found that the Respondents had established a prima facie case; that the Respondents relied only on a letter of allotment, whereas the Appellants held a registered title deed and that a letter of allotment, without proof of compliance with its conditions and perfection into title, could not confer ownership or support an injunction. Cited in support was ***Nguruman Limited vs Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR),***

6. Counsel additionally submitted that the lower court lacked pecuniary jurisdiction because the suit property is over Kshs 40 million, far above the jurisdiction of the Magistrate's Court and that this valuation was not rebutted that. Reliance was placed on ***Mohammed & Another vs. Haidara [1972] E.A 166,*** where the court held that uncontroverted affidavit evidence remains unrebutted in the absence of a replying affidavit.

7. Finally, counsel submitted that the Magistrate ignored the doctrine of stare decisis despite the Appellant's evidence

ORIGINAL

showing that ownership of the suit property had already been litigated to the Supreme Court. Reliance was placed on ***Asanyo & 3 others vs Attorney-General [2020] KESC 62 (KLR)***, where the Supreme Court emphasized that all courts below are bound by its decisions under **Article 163(7)** of the **Constitution.**

8. The Respondents' counsel filed submissions on 16th March 2026. Counsel submitted that the grant of interlocutory injunctions is governed by **Order 40 Rule 1** of the **Civil Procedure Rules**, with the applicable principles being those set out in ***Giella vs Cassman Brown & Co. Ltd [1973] EA 358***, and maintained that the Respondents had satisfied all the requisite conditions for the grant of an injunction, namely the establishment of a prima facie case, demonstration of irreparable harm, and, where necessary, that the balance of convenience tilted in their favour.

9. In this case, it was urged, the Respondents had demonstrated that East Sidaz Self Help Youth had been allotted the suit property in 1999 and had complied with the conditions in the allotment letter by paying the standard premium, annual rent, survey fees, architectural fees and approval charges.

10. It was urged that while the Appellants claimed to hold a title deed, they had not complied with the obligations contained theira own allotment letter and therefore could

ORIGINAL

not have acquired a valid title. Reliance was placed on ***Joseph Arap Ng'ok vs Justice Moijo Ole Keiwua [1997]eKLR*** where the Court of Appeal held that a title can only arise after issuance of an allotment letter, compliance with its conditions and issuance of a title document.

11. It was further submitted that the Respondents had demonstrated possession and occupation of the suit property through photographs showing the Appellant's alleged trespass and unlawful activities. Counsel argued that the Appellants had not shown that they were in actual occupation of the land and that their attempts to take possession had been halted by the Nairobi City County Government through a cancellation of authority letter dated 3rd October 2024 and an enforcement notice dated 8th October 2024.

12. In those circumstances, counsel maintained that the trial Magistrate was correct in finding that there was a bona fide dispute regarding ownership and that the Appellant's actions posed a real risk of alienation of the property. Also cited was ***Nguruman Limited vs. Jan Bonde Nielsen & 2 Others (2014) eKLR.***

13. On the question of stare decisis, counsel submitted that the Appellants had mischaracterized the earlier litigation; that although they had produced judgments from the Environment and Land Court, the Court of Appeal and the

ORIGINAL

Supreme Court, those cases concerned different parcels of land, namely LR Nos. 36/IV/106, 36/IV/107 and 36/IV/108, and not LR No. 36/IV/R, which is the suit property in the present matter.

14. On the issue of pecuniary jurisdiction, counsel submitted that the Appellants' assertion that the suit property was valued at Kshs 40 million was unsupported by any valuation report and amounted to a bare allegation; that the suit before the lower court was essentially one for trespass and did not disclose any specific value of the property, and that, in any event, the property, being a small, undeveloped parcel in Section IV of Eastleigh could not exceed Kshs 5 million in value, thereby placing it well within the pecuniary jurisdiction of the trial court.

Analysis and findings

15. The appellate jurisdiction of this court over the present Appeal is anchored in **Article 162(2)(b)** of the **Constitution** as read together with **Section 13(4)** of the **Environment and Land Court Act**, **2011** as well as **Section 133D of the Land Act.**

16. This being a first appeal, the court is required to re-evaluate the evidence tendered and make its own findings and conclusions. The court is not bound by the findings of fact and law made by the lower court and may on re-evaluation reach its own conclusions and findings. This principle was

ORIGINAL

aptly enunciated in the case of ***Selle & Another vs Associated Motor Boat Co. Ltd & others (1968) EA 123*** where the Court of Appeal held as follows:

> ***"This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen or heard the witnesses and should make due allowance in this respect."***

17. Having considered the pleadings and the submissions filed by the parties, the issues that arise for determination are;

i. *Whether the Magistrate Court had jurisdiction to entertain the matter and if so?*
ii. *Whether the Magistrate Court erred in finding that the Respondents had established a case for the grant of injunctive relief?*

18. It is trite that jurisdiction is everything. This was expressed in the locus classicus case of ***Owners of Motor Vessel "Lilian S" vs Caltex Oil (Kenya) Limited [1989] IKLR***, where the court held:

ORIGINAL

> ***"Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction…where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given."***

19. It is equally trite that jurisdiction flows solely from the Constitution or an Act of Parliament, and cannot be assumed or implied. Speaking to this, the Apex Court in the case of ***Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others (2012) eKLR*** noted:

> ***"A court's jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by the law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter***

ORIGINAL

before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings."

20. Indeed, so crucial is jurisdiction that it can be raised at any stage. This was expressed in the Court of Appeal in ***Jamal Salim vs Yusuf Abdulahi Abdi & another Civil Appeal No. 103 of 2016 [2018] eKLR*** stated as follows:

> "***Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in Adero & Another vs. Ulinzi Sacco Society Limited [2002] 1 KLR 577, as follows; 1) …….. 2) The jurisdiction either exists or does not ab initio … 3) jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction. 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal."***

21. The Appellants contend that the trial court lacked jurisdiction to entertain the matter. The Respondents, on their part, dispute that position. A perusal of the record shows that the issue of jurisdiction was expressly raised

ORIGINAL

before the trial court vide the 1st Appellants replying affidavit dated 25th September 2024 in which he deponed that the suit property was valued at Kshs 40 million, thereby placing it beyond the scope of the court's pecuniary jurisdiction.

22. Once that objection was taken, it was incumbent upon the trial court to interrogate and determine, as a threshold issue, whether it was properly seized of jurisdiction. However, a reading of the impugned ruling does not demonstrate that the court addressed its mind to this question. In that respect, the trial court fell into error in failing to consider and determine the issue of jurisdiction when it was squarely placed before it.

23. So, did the trial court have jurisdiction? It is not in dispute that the Magistrates' Courts are vested with jurisdiction to hear matters relating to land and the environment under **Section 9** of the **Magistrates' Courts Act**. However, that jurisdiction is not unlimited. It is circumscribed by the pecuniary thresholds set out under **Section 7** of the **Magistrates' Courts Act, 2015**.

24. As aforesaid, the Appellants asserted that the suit property is valued at approximately Kshs 40 million thereby placing it outside the pecuniary jurisdiction of the trial court. However, a careful review of the record reveals that this assertion was not supported by any valuation report or

ORIGINAL

other cogent evidence. In the absence of proof, the court is unable to make a finding that the trial court lacked jurisdiction to entertain the matter.

25. The grant of interlocutory injunctions is governed by **Order 40 Rule 1** of the **Civil Procedure Rules, 2010.** The provision empowers the court to issue a temporary injunction where it is demonstrated, by affidavit or otherwise, that the property in dispute is in danger of being wasted, damaged, or alienated, or where a defendant threatens to dispose of the suit property in circumstances that may obstruct or delay the execution of any decree that may ultimately be issued.

26. In determining whether a plea for injunction is merited, the court must have regard to the well-settled principles enunciated in ***Giella vs Cassman Brown & Co. Ltd [1973] EA 358***, namely an applicant must establish a prima facie case with a probability of success, demonstrate that irreparable injury would result if the injunction is not granted, and where the court is in doubt, the matter is to be determined on a balance of convenience.

27. These requirements must be satisfied sequentially. As affirmed by the Court of Appeal in ***Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR***, the establishment of a prima facie case, proof of irreparable harm, and the balance of convenience are distinct and

ORIGINAL

logical hurdles, each of which must be satisfied before the court can grant interlocutory injunctive relief.

28. As aforesaid, the Respondents herein instituted the suit simultaneously with an application for injunctive reliefs. In brief, the Respondents' case was that they are the lawful allottees and long-standing occupiers of the suit property, having been issued with a letter of allotment dated 5th October 1999 and having complied with its conditions through payment of the requisite charges. They asserted that since allocation, they had remained in quiet and uninterrupted possession, where they established and operated a garbage disposal business.

29. They further contended that the Appellants, through third parties, unlawfully invaded the property, forcefully entered, destroyed their structures, and commenced fencing it off, thereby interfering with their possession. Despite protests and demands to vacate, the intruders allegedly persisted in their actions.

30. In response, the Appellants stated that the suit property does not belong to the Respondents but is lawfully owned by Tanad Transporters Limited, of which they are directors and shareholders. They asserted that the company was allotted the land in 1992, duly complied with all conditions, and was subsequently issued with a 99-year lease and a certificate of title in 2009, thereby conferring absolute ownership.

ORIGINAL

31. They further contended that ownership of the suit property had already been conclusively litigated from the Environment and Land Court, to the Court of Appeal, and ultimately the Supreme Court, all in favour of the company. On that basis, they maintained that the Respondents' reliance on a mere letter of allotment could not defeat a registered title, and that the Respondents had neither title nor possession of the property.

32. The Appellants also denied any wrongdoing, asserting that any developments on the property, including fencing, were undertaken lawfully pursuant to approval from the County Government. They characterized the Respondents' claim as baseless and an abuse of the court process, and urged that no basis had been established for the grant of injunctive relief.

33. In further response, the Respondents contended that the authority relied upon by the Appellants had since been revoked due to the subsisting dispute and pursuant to an enforcement notice directing the Appellants to cease their alleged illegal hoarding activities.

34. They further maintained that the Appellants were, in any event, asserting a claim over a different parcel of land. In that regard, they clarified that the property occupied by the Appellants is situated in Section IV of Eastleigh and measures approximately 0.06 hectares, whereas the parcel

ORIGINAL

referenced by the Appellants is located in Section III of Eastleigh and is substantially larger, measuring approximately 0.69 hectares.

35. Beginning with the question of whether a prima facie case was established, the trial court found in favour of the Respondents. In particular, the court was persuaded that although both parties held documents referring to different parcel descriptions, the dispute on the ground related to the same property, and that the Respondents had been in possession prior to the Appellants' attempts to fence it.

36. Further, the trial court placed weight on the fact that the Appellants' authority to fence the property had been cancelled by the County Government and that an enforcement notice had been issued requiring cessation of the impugned activities. On that basis, the court concluded that there existed a genuine and arguable dispute requiring resolution at a full hearing, and found that a prima facie case had been established.

37. It is evident that the dispute relates to the same physical parcel on the ground, notwithstanding the differing descriptions in the parties' respective documents. While the Appellants assert that ownership has been conclusively determined in prior proceedings, that contention remains contingent upon establishing whether the parcel in issue

ORIGINAL

corresponds with L.R. No. 36/IV/107 as opposed to L.R. No. 36/IV/R.

38. At this interlocutory stage, the central consideration is possession. The material placed before the trial court, including photographic evidence, demonstrates that the Respondents were in occupation of the suit property and that such possession was subsequently disrupted through acts attributed to the Appellants, including the destruction of structures and the erection of a perimeter fence. On their part, the Appellants only relied on their authority to fence the property, as evidence of possession, which was ultimately revoked on account of the dispute over the property.

39. In those circumstances, and given that the Respondents' possession has prima facie been established and is under threat, this court is satisfied that the trial court properly found that a prima facie case had been made out.

40. On irreparable harm, the trial court found that the Respondents, being in occupation, stood to suffer harm if the property was alienated or interfered with by the Appellants. The court reasoned that continued acts of fencing and assertion of control by the Appellants posed a real risk of dispossession and possible alienation of the suit property, which would not be adequately compensable in damages.

ORIGINAL

41. This court is similarly persuaded that where a party demonstrates possession of land and a real threat of dispossession, the injury transcends mere monetary loss and touches on proprietary and possessory rights. In such circumstances, damages would not be an adequate remedy. The trial court therefore properly directed itself on this limb and arrived at a sound conclusion.

42. With respect to the balance of convenience, it was contended that the learned Magistrate erred in failing to address that limb of the test. However, the record reflects that the trial court expressly gave reasons for declining to consider it. In particular, the court stated:

> *"I have found in favour of the Applicant on the principle of prima facie case as well as irreparable loss; I am not in doubt as to what findings should ultimately obtain. I will therefore not consider the last principle of balance of convenience."*

43. Indeed, the sequential nature of the **Giella test**, as affirmed in ***Nguruman Limited vs Jan Bonde Nielsen & 2 Others(supra),*** makes it clear that the balance of convenience only arises where the court entertains doubt on the first two limbs. That was not the position here. The trial court's finding that there was no uncertainty was grounded in the material before it. Accordingly, this court finds that

ORIGINAL

the learned Magistrate cannot be faulted for declining to consider the balance of convenience.

44. For those reasons, the court finds the appeal to be unmerited. The same is dismissed with costs.

Dated, signed and delivered virtually in Nairobi this 14th day of May, 2026.

O. A. Angote
Judge

In the presence of;

No Appearance for Appellant

No Appearance for Respondent

Court Assistant: Tracy

ORIGINAL