



**Jefwa v Yongo (Environment & Land Case 12 of 2023)
[2024] KEELC 119 (KLR) (23 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 119 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 12 OF 2023
FM NJOROGE, J
JANUARY 23, 2024**

BETWEEN

KARISA JEFWA PLAINTIFF

AND

CRISPIN BIYONGO YONGO DEFENDANT

RULING

1. The Plaintiff’s notice of motion application dated 18th August 2023 has been brought under Sections 1A, 1B, 3A and 63 of the Civil Procedure Act and Order 40 Rules 1,2, 3, 4 and 10 and Order 51 of the Civil Procedure Rules. The Plaintiff seeks the following orders:
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing and determination of the suit, Defendant his servants, agents and/ or any other person acting under him be restrained by way of a temporary injunction from selling, transferring, charging, and/or removing, erecting fences, beacons or any other illegal structures, trespassing onto, encroaching upon and/or remaining on, or taking possession of or fencing off or interfering with the Plaintiffs/Applicant’s occupation and peaceful enjoyment of the suit property or in any other way dealing with all that land known and or referenced as Mtwapa settlement scheme/172.
 - d. That the costs of this application be provided for.
2. In support of the application are the grounds enumerated on the face of the motion and the affidavit sworn by the Plaintiff. The Plaintiff deposed that he is that he is the original allottee, beneficial owner and occupant of the parcel of land identified as Mtwapa Settlement Scheme/172 (the suit property) having paid all the requisite fees to the Settlement Fund Trustees and issued with receipts and an



- acceptance of offer letter. He avers that the Defendant has unlawfully and fraudulently transferred the suit property to third parties without his knowledge and consent. As such, he deposed, it is in the interest of justice that the Defendant is restrained from dealing with the suit property any further.
3. The Defendant opposed the application. He filed a Replying Affidavit dated 6th November 2023 and a Notice of Preliminary Objection anchored on the sub-judice rule which was later withdrawn. In his replying affidavit however, the Defendant stated that he purchased the suit property measuring approximately 18.7 acres back in 1982 from one Catherine K. Gituma for a consideration of Kshs. 80,000/- and a certificate of title issued to him on 15th July 1982. The Defendant added that prior to 1982, the Plaintiff had willingly sold all his rights and interests to the said Catherine and that he (the defendant) has since 1982 been occupation thereof.
 4. On 29th November 2023, this court issued directions that the application be heard by way of written submission which were to be filed within a period of 14 days. These orders were not complied with by either party. Both parties elected not to comply with this court's direction and for this reason I am inclined to dismiss the application for that very reason. Nonetheless, I have perused the notice of motion and supporting affidavit, I am not satisfied that the Plaintiff has established a prima facie case or demonstrated any potential loss that may be occasioned to him should the orders sought be denied (See *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No.77 of 2012 [2014] eKLR; *Giella v Cassman Brown Co. Ltd* [1973] EA 360).This is because it is not disputed that the suit property is registered in the name of the Defendant and the Plaintiff has failed to demonstrate that he is in actual possession thereof.
 5. In the given circumstances, I find no merit in the application dated 18th August 2023. It is hereby dismissed. Its costs shall be in the cause.

DATED, SIGNED AND ISSUED AT MALINDI ON THIS 23RD DAY OF JANUARY 2024.

MWANGI NJOROGE

JUDGE, ELC MALINDI.

