



Yongo v County Government of Nairobi & another (Environment & Land Miscellaneous Case E092 of 2023) [2024] KEELC 144 (KLR) (24 January 2024) (Ruling)

Neutral citation: [2024] KEELC 144 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E092 OF 2023**

**AA OMOLLO, J
JANUARY 24, 2024**

BETWEEN

DOMINUS BOS YONGO PLAINTIFF

AND

COUNTY GOVERNMENT OF NAIROBI 1ST RESPONDENT

SHAURI MOYO AFRICAN TRADERS ASSOCIATION 2ND RESPONDENT

RULING

1. The Plaintiffs/Applicants brought an application dated 4th April 2023 under Order 40 Rules 1, 2, 3, 9 and 10 of the *Civil Procedures Rules*, Sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act* and under Part 1, Rules 1, 2 and 3 of the High Court (Practice and Procedure Rules), Sections 10 of the *Judicature Act* and all enabling provisions of the law seeking for the following orders;
 1. Spent.
 2. Spent.
 3. That pending hearing and determination of this application and with immediate effect an order of injunction prohibiting and restraining the defendants whether by themselves, employees, servants and or agents or otherwise assigns and or any person whatsoever acting on their behalf and or under their mandate and or instructions from taking possession, leasing, alienating, transferring or otherwise in any manner interfering with the plaintiffs tenancy and or management of running of Toilet Block Number A (437T)m situated within Shauri Moyo Market, Nairobi County.
 4. That pending the hearing and determination of this suit and with immediate effect an order of injunction prohibiting and restraining the Defendants whether by themselves employees, servants and or agents or otherwise assigns and or any person whatsoever acting on their



behalf and or under their mandate and or instructions from taking possession, leasing, alienating, transferring or otherwise in any manner interfering with the plaintiffs tenancy and or management of running of Toilet Block Number A (437T)m, situated within Shauri Moyo Market, Nairobi County.

5. That cost of this application be provided for.
2. The application was further supported by the grounds on the face of it and the affidavit of Fredrick Odhiambo Omini, Dominus Bos Yongo and Francis Kimani Wanjohi as follows;
 - i. That the Applicants were at all material times the registered allottees/tenants of Toilet Block Number A (437T), situated inside Shauri Moyo Market and duly authorized to run the said sanitary facility by the City Council of Nairobi and which commenced on 12th April 2011.
 - ii. That the Applicants have duly paid (full) licenses and business permits for the year 2023 over the suit premises viz Toilet Block A (437T) situated at Shauri Moyo Market.
 - iii. That the Respondents are aimed and intent at unlawful and unprocedurally revoking the plaintiff allotment and tenancy over the suit premises Toilet Block A (437T), Shauri Moyo Market and taking over the same by dint of a letter dated the 14th of February 2023 infringing on the Plaintiff's proprietary interests and rights.
 - iv. That it is only fair and just that the orders sought be granted as the Defendants/Respondents unless restrained by this Honourable Court will proceed and unlawfully transfer and or take over the allotment/tenancy of the suit premises, Toilet Block A (437 T), Shauri Moyo Market to the Plaintiffs detriment, loss and damage.
 3. The 1st Defendant/Respondent filed their Grounds of Opposition on 19th June 2023. The Defendant/Respondent stated that:
 - i. The Plaintiffs/Applicants' were well aware that the said toilet facilities were not rental stores and thus cannot purport to be tenants.
 - ii. The Plaintiffs/Applicants were licensees who were running and operating toilet facilities in Shauri Moyo Market.
 - iii. The aforesaid allotment was specific to toilet blocks and not rental stall.
 - iv. The said facilities were under the management of the 1st defendant/Respondent in partnership with the sitting market committee.
 - v. At all material times, the 1st Defendant/Respondent retained ownership of the subject stall as the Applicants were mere licensees.
 - vi. At all material times, the 1st Defendant/Respondent retained the mandate to organize and run the toilet facilities.
 - vii. Further to the foregoing paragraph, the 1st Defendant/Respondent was well within its right to terminate the Tenancy with one month's notice as stipulated under clause 32 of the terms and conditions of the tenancy agreement.
 - viii. The 1st Defendant/Respondent was well within its mandate in issuing the change in management of the sanitary facilities.
 - ix. The application fails to meet the requisite criteria for the orders sought.



- x. The Plaintiff/Applicants' application dated 4th April 2023, is therefore bad in law, an abuse of the Court process and ought to be dismissed with costs to the 1st Defendant/Respondent.
4. The parties agreed to dispense with the hearing of this application by way of written submissions.
5. The Plaintiffs/Applicants submitted that they have demonstrated a prima facie case on the basis that the Defendant's directive of revoking their allotment was made without the participation of the Applicants. Secondly, that the directive contravened the provisions of the Nairobi City Council Public Participation Act, 2015 and the Applicants proprietary interests in the suit property.
6. The Applicants further stated that they shall suffer irreparable loss and the court should not fold its hands and condone the Defendant flouting the law on the basis that damages can be an adequate remedy. They cited the case of Waithaka Vs ICDC Civil Case No. 321 Of 2001 where Ringera J stated thus; "If the adversary has been shown to be high handed or oppressive in its dealings with the applicant this may move a court of equity to say; money is not everything at all times and in all circumstances and don't think you can violate another citizen's right only at the pain of damages"
7. On the balance of convenience, the Applicants submitted that they have extensively invested in the facility and has been managing it well for the last 12 years. That they draw source of their livelihood from the facility which is likely to be cut short by the directive. That the Defendant will not suffer any harm if the injunction is granted.
8. I have perused the letter of allotment dated 12th April 2011 which placed the Applicants into possession. The conditions placed in the letter was payment of monthly rent and to run the facility as per the Council's by-laws and regulations. Part of annexature FOO-1 contained the terms of the tenancy for City Council rental Markets. At clause 32 that the Defendant could terminate the tenancy by giving one month notice prior to the end of one calendar month.
9. I have compared the person to whom the allotment letter was addressed to and the addressee and intent of the letter of 23rd February, 2023. Under paragraph 2 of the latter letter, the Defendant stated thus, "we are pleased to inform you that through memo ref dated 13th January 2023, the County Secretary and head of County Public Service has approved the request to have all toilet blocks within markets be managed by sitting market management committees."
10. The initial allotment was to the Old Market Committee and the Applicants were selected to run the facility. Consequently, it is my understanding that the allotment was not to the Applicants in their individual capacities. This suit is not brought on behalf of the Old Market Committee and to this extent, I am not satisfied that the Applicants have demonstrated that they have a prima facie case. Secondly, by the directive in the letter of 23rd February 2023 the Defendant is not taking away the facility. It still left the toilet blocks to be run by the "sitting management committee" and so no loss or damage can be apportioned to the Defendant.
11. The nature of loss/damage in any event will be in monetary terms so that if the Applicants succeed in proving the claim, the loss will be assessed.
12. In concluding, I am not persuaded that the application merits the granting of the injunctive reliefs sought. Consequently, the same is dismissed with costs in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JANUARY 2024.

A. OMOLLO

JUDGE

