



REPUBLIC OF KENYA



KENYA LAW
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Ilkarian Church of God In East Africa (K) v Seme & 12 others (Environment & Land Case E023 of 2024) [2025] KEELC 845 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 845 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E023 OF 2024
MN MWANYALE, J
FEBRUARY 27, 2025

BETWEEN

ILKARIAN CHURCH OF GOD IN EAST AFRICA (K) PLAINTIFF

AND

LEONARD OLE SEME 1ST DEFENDANT
JOHN SANKALE 2ND DEFENDANT
PAULINE AMING'A 3RD DEFENDANT
ANDREW MACHICHI 4TH DEFENDANT
ZAKAYO GITHINJI 5TH DEFENDANT
PRICILLAH KONCHORI 6TH DEFENDANT
OLE RANKA 7TH DEFENDANT
PHILIP OMWENGA 8TH DEFENDANT
OCHARO KIBOMA 9TH DEFENDANT
SIMON SEME 10TH DEFENDANT
JAMES NGALA OYUGI 11TH DEFENDANT
JUSTUS MBOGUA 12TH DEFENDANT
SEVENTH DAY ADVENTIST CHURCH (EAST AFRICA)
LIMITED 13TH DEFENDANT



RULING

1. *Vide* the Notice of Motion dated 5th September 2024, the Plaintiff/Applicant sought for the following orders.
 - a. Spent.
 - b. Spent.
 - c. A temporary injunction restraining the Respondents, their employees, agents, servants and/or whomsoever jointly or severally from invading, entering into, remaining therein, trespassing, developing constructing any houses, operating thereon or in any other way whatsoever dealing and/or interfering with the Applicant's possession and use of land parcel number Transmara/Moyoi/146 pending hearing and determination of this suit.
 - d. Costs of the suit.
2. This Application was filed alongside the Plaint dated 05.09.2024, which Plaint was later Amended on 16th December 2024 pursuant to order 8 Rule 1, of the Civil procedure Rules the Defendants having not filed by that time and up to the time of delivery of this Ruling.
3. The Application is premised on grounds inter alia, that
 - i. The Applicant is the Bonafide Owner of land parcel Transmara/Moyoi/146.
 - ii. That the Respondents have unlawfully invaded the Applicant's suit property and commenced developing the same with houses with clear intentions of dispossessing the Applicant.
 - iii. The Applicant stands to suffer irreparable harm if the injunction sought herein is not granted as the Respondents are wasting away the property.
 - iv. The Applicant gives an undertaking as to damages.
 - v. That this is a proper and fit case to grant the orders sought.
4. The Application is further supported by the supporting affidavit deponed by Rev. Michael Lemiso Kisiriko, who reiterate the grounds in support of the Application and annexed a copy of the title deed and a copy of the search in relation to the suit property as well as photographs of the illegal developments and a survey report confirming encroachment.
5. The Application is opposed by the Replying affidavit of the 1st Defendant/Respondent Mr. Leonard Ole Seme deponed on 4th of October 2024, together with a Notice of preliminary objection which was undated.
6. Replying affidavit in his the deponent depones that
 - i. Lolgorian Township Council identified land for alienation and advised the commissioner of land to allot various plots to the people in Lolgorian Township Council, thus a Part Development Plan was developed and approved and he annexed a copy thereof which was not clear.
 - ii. That Plots were gazetted for sale and sold by auction by the commissioner of lands, and that he together with the other defendants bided for the same and were issued with letters of allotment for the purchased plots.



- iii. That having been allocated the plots were no longer available for alienation as there were not repossessed, by either Lolgorian Township or its predecessor (sk) since no enforcement notice was ever issued, to any person.
 - iv. That deponent denied invasion of Transmara/Moyoi/146 as the beacon certificate of Transmara/Moyoi/146 and the Respondents parcels are different.
 - v. That the Applicant have not established prima facie case with a probability of success, not demonstrated any irreparable loss/injury incapable of being compensated by an award of damages, and that the balance of convenience did not tilt in its favour hence the Application ought to be dismissed, with costs.
7. In the undated Notice of preliminary objection, the same is premised on grounds inter alia,
- i. That suit is incompetent, lacks merit and should be struck out in limine.
 - ii. The plaintiff being a religious institution registered under the *Societies Act*, the Plaintiff/Applicant lacks capacity to sue and the suit offends Section 3 of *Cap 108* of the laws of Kenya, as well as Order 1 Rule 8 of the *Civil Procedure Rules 2010*, and equally sought for dismissal of the Application.
8. Parties were directed to file written submissions on the application, the Respondents Advocates filed an application seeking leave to cease acting on behalf of their clients but withdrew the same, however they did not file submissions in respect of the application now subject of this Ruling.

Applicant's Submission

9. The Applicant submit that the Respondents had withdrawn their Notice of Preliminary Objection upon them filing their Amended Plaintiff.
10. They submit that they have established a prima facie case as defined in *Mrao Limited*, having annexed a copy of a title deed and a copy of a search demonstrating Ownership.
11. On irreparable harm, the Applicant submits that the unlawful actions of invasion and illegal construction by the Respondents who are not leases or licensees, will make the Applicant loose their property.
12. On balance of convenience, the Applicant submits that the suit property belongs to them so no prejudice will be on the Respondents and that the application is thus meritorious and should be allowed.

Respondents Submissions

13. The Respondent did not file any submissions.

Issues for Determination

14. The court frames issue for determination as to
 - i. whether the application meets the criteria for grant of an injunction and
 - ii. whether the application is merited.



Analysis and Determination

15. It is trite law that the conditions for grant of temporary injunction were held in the case of *Giella Vs. Cassman Brown* to be as follows;

“Firstly, an Applicant must show a *prima facie* case with a probability of success, secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer imperable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

16. Have the Plaintiff/Applicants made out a *prima facie* case? A *prima facie* case was defined in the decision in the case of *Mrao Limited vs. First American Bank Limited and 2 Others* (2003) KLR as follows;

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

17. Going back to the facts without dwelling into the issues conclusively at this interlocutory stage, the Plaintiff/Applicant has been exhibited a copy title deed over Transmara/Moyoi/146 as well as a copy of Certificate of Official Search in respect of the property.

18. In response the Respondents exhibited letter of allotments of various properties that they allege are different from the suit property in terms of the Part Development Plan of Lolgorian Township.

19. Where an allotment letter has been exhibited and a title deed exhibited, the title deed is the one that is recognized as conferring rights and interest under Section 24 – 26 of the *Land Registration Act*, and the registration of title has been confirmed by the certificate of official search.

20. Accordingly, by exhibiting the title the Applicant has demonstrated that he has a right and interest in Transmara/Moyoi/146 that needs to be protected, by the court; and the court finds that the plaintiff has thus established a *prima facie* case with probability of success.

21. On the 2nd limb of the *Giella v Cassman Brown* Principles the Applicant, the Applicant deposes having been in occupation of the suit property for the last 4 decades and that the Defendants/Respondents are putting up construction and they would dispossess it. The court also notes the photographs that reveal felling of trees in the suit land and is satisfied that the actions complained of will occasion irreparable injury to the Applicant, which damages may not be adequately met.

22. On the balance of convenience, it is in favour of the Applicant and the court deems that this is a proper and fit case to grant an injunction the Applicant having met the criteria for grant of the injunction and the application being merited.

23. Accordingly, the injunctive prayer No. C of the application is hereby issued, with;

A temporary injunction restraining the Respondents, their employees, agents, servants and/or whomsoever jointly or severally from invading, entering into, remaining therein, trespassing, developing constructing any houses, operating thereon or in any other way whatsoever dealing and/or interfering with the Applicant's possession and use of land parcel number Transmara/Moyoi/146 pending hearing and determination of this suit.

24. Costs of the application are granted to the Applicant.



DATED AND DELIVERED AT KILGORIS THIS 27TH DAY FEBRUARY OF 2025

HON. M.N. MWANYALE

JUDGE

In the presence of:

Ms. Akinyi for the Applicant

N/A for Mr. Owuor duly notified

CA Emmanuel/Sylvia

