



**Jonco Company Limited v Mirii & 5 others (Environment & Land Case
E080 of 2023) [2024] KEELC 76 (KLR) (15 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 76 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E080 OF 2023**

**EK WABWOTO, J
JANUARY 15, 2024**

BETWEEN

JONCO COMPANY LIMITED PLAINTIFF

AND

W.MIRII 1ST DEFENDANT

MAHAD ADAN 2ND DEFENDANT

MOHAMED 3RD DEFENDANT

KEVIN NOGU 4TH DEFENDANT

ABDULRAHMAN MOHAMED 5TH DEFENDANT

ISKAASHATO KENYA LIMITED 6TH DEFENDANT

RULING

1. On 29th September 2023, this Court differently constituted granted temporary injunctive orders against the defendants in respect to LR No. Plot No. 36/VII/423 situated within Eastleigh pending the hearing and determination of this application.
2. The 6th defendant being aggrieved by the said orders moved this Court vide an application dated 22nd November 2023 seeking to set aside the orders given by the Court on 13th October 2023 and injunctive orders restraining the Plaintiff from trespassing on the property known as Nairobi/Block 49/245 (formally known as LR No 36/VII/423). The application was supported by the affidavit sworn by Adan Mohammed on 22nd November 2023.
3. The application was opposed by the Plaintiff vide a Replying affidavit sworn by Mohamed Maalim on 18th December 2023.



4. During the hearing of the application, Counsel for the 6th Defendant argued that the Plaintiff misled this Court through forged documents in getting the interim orders. It was contended that the 6th Defendant is currently in occupation and possession of the suit property being its registered owner and that the interim orders obtained seeks to expose the 6th Defendant to eviction from the suit property. The application was also supported by the 2nd and 5th Defendant who urged the Court to grant the orders sought.
5. The Plaintiff argued that the 6th Defendant is not the registered owner of the suit property. It was also submitted that the 6th Defendant is a “notorious grabber” seeking to grab the suit property. The Plaintiff also denied the allegations of forgery as averred by the 6th Defendant.
6. The Plaintiff also submitted that contrary to the allegations made by the 6th Defendant that the Plaintiff’s company was registered in 2023, the company was actually registered in the year 1993 vide a certification of incorporation dated 17th February 1993. The Court was urged to dismiss the application with costs.
7. It was also argued that the 6th Defendant does not deserve the orders sought since it has some to Court with unclean hands.
8. The Court has considered the application, the affidavits filed and oral submissions made by Counsel for the Parties and the main issues for determination are: Whether the 6th Defendant has met the threshold to warrant this Court to review, vary or set aside its orders made on 13th October 2023 and secondly whether the 6th Defendant is entitled to the injunctive orders sought.
9. The 6th Defendant contends that it is the registered owner of the suit property. It states that it purchased the suit property from Francis Thuo Njoroge vide a sale agreement dated 14th December 2012, and that it has been in possession of the same from 14th July 2022 when the transfer was effected. It was also contended that the Plaintiff’s documents in respect to the property are forgeries.
10. The jurisdiction of the court to set aside an or vary an order of injunction is outlined under Order 40 Rule 7 [*Civil Procedure Rules*](#), 2010 which provides as follows:

“Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.”
11. In the instant case, the Plaintiff has denied all the allegations made by the 6th Defendant. From the pleadings and the information availed by the Parties. It now appears that the Plaintiff and the 6th Defendant are trying to litigate over the ownership of the suit property through interlocutory applications. Considering that both parties have laid claim to the suit property and have equally raised weighty issues in respect to the same, it is only just and fair that the suit property be preserved pending the determination of the suit. It is clear that the issues raised by the parties can only be resolved fully during trial after hearing the evidence of their evidence.
12. In view of the above, this Court shall proceed to issue the following orders:
 - i. The orders issued on 13th October 2023 are hereby set aside and substituted with an order that pending the hearing and determination of this suit there shall be no transaction whatsoever including but not limited to alienating, transferring of any proprietary interest or undertaking any construction on the suit property.
 - ii. There shall be no eviction of either party from suit property.



- iii. There shall be no further construction or development by either party and any construction currently ongoing shall cease forthwith.
- iv. Parties to comply with the provisions of Order 11 of the *Civil Procedure Code* within 30 days from today to allow the suit proceed for trial.
- v. Costs to abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF JANUARY 2024.

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Kariuki for the Plaintiff.

Mr. Mworira for 2nd Defendant.

Mr. Mutegi h/b for Mr. Omar for 5th Defendant.

Mr. Hussein for 6th Defendant.

N/A for other parties.

Court Assistant; Caroline Nafuna.

