



REPUBLIC OF KENYA



**KENYA LAW**  
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**Eames v Lugwemwandazi & 2 others (Environment & Land Case  
E007 of 2023) [2024] KEELC 975 (KLR) (27 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 975 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E007 OF 2023  
NA MATHEKA, J  
FEBRUARY 27, 2024**

**BETWEEN**

**LUCY WANJIKU EAMES ..... PLAINTIFF**

**AND**

**GILBERT LUGWEMWANDAZI ..... 1<sup>ST</sup> DEFENDANT**

**STEPHEN ODINDO ..... 2<sup>ND</sup> DEFENDANT**

**MARTIN MUNGA MWAROME ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff/applicant brought an application dated 20<sup>th</sup> December 2023 seeking the following orders against the defendants;
  1. Spent.
  2. Pending the interpartes hearing and determination of this application, an order of injunction be issued to restrain the defendants by themselves, servants or agents from entering into the property known as MSA/MS/Block I/338, further demolishing the wall and houses thereon, remaining on the property, interfering with the security guards and caretakers, constructing any structures thereon, remaining on the property, or otherwise interfering with the property or the plaintiff's quiet enjoyment and possession of the property.
  3. The Officer Commanding Police Division Likoni in charge of Shelly Beach/Likoni.
  4. That pending the hearing and determination of this suit, an order of injunction be issued to restrain the defendants by themselves, servants or agents from entering into the property known as MSA/MS/Block I/338, further demolishing the wall and houses thereon, remaining on the property, interfering with the security guards and caretakers, constructing any structures



thereon, remaining on the property, or otherwise interfering with the property or the plaintiff's quiet enjoyment and possession of the property.

5. That costs of this application be provided.
2. Despite service on the defendants as evidenced by the affidavit of service sworn on 9<sup>th</sup> January 2024 by one Michael Mutinda, all the defendants have failed to file and serve a response. The application is therefore undefended.
3. The issue for determination is whether the main prayer of a temporary injunction can be issued or not? The prayer for temporary injunction is well discussed in the celebrated case of *Giella v Cassman Brown* (1973) EA 358. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR the Court of Appeal held that;

" in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially".

4. The plaintiff claims that she is he registered owner of all that parcel of land known as L.R No. Mombasa/Mainland South/Block I/338 situated at Shelly Beach, Likoni and she has produced a certificate of lease dated 24<sup>th</sup> November 2011 as proof of leasehold for a period of 50 years commencing on 1<sup>st</sup> January 2004. Section 26 of the *Land Registration Act* states as follows:
  - (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
    - a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
  - (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original."
5. Furthermore, the plaintiff attached a history of how she was able to acquire the property from the original owner. The only objection on record is found as annexure L-8 which is a response by an advocate for the 3<sup>rd</sup> defendant. He states that the defendant has lived with his family on the suit property for over 20 years and that one Lucy Wanjiru (deceased) invited him on the suit land. Although, the plaintiff alleges that the counsel was referring to her, the court is apprehensive and will only deal with this during trial. I therefore find that the plaintiff has a prima facie case.



6. On temporary injunctions, the plaintiff is also required to show irreparable injury and I am guided by *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR where court held;

" Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury."

7. The plaintiff in his supporting affidavit has alleged that the County Government of Mombasa claim that her leasehold has expired and they have a tendency of conspiring with 'professional' squatters within the area where the suit property is located. She is apprehensive that if the suit property is left vacant, it is highly possible it will be invaded by the squatters as her perimeter wall has already been demolished. According to the photographs L-9 the suit property is vacant the buildings having been demolished and vandalized. On the issue of the balance of convenience In *Pius Kipchirchir Kogo case* (*Supra*) the court held;

" The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

8. In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting".

9. I find that the balance of convenience tilts in favour of the plaintiff in this case. I find that her application is merited and order that the status quo be maintained pending the hearing and determination of this case. Costs of the application to be in the cause.

10. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 27<sup>TH</sup> DAY OF FEBRUARY 2024.**

**N.A. MATHEKA**

**JUDGE**

