



Hussein & 6 others v Abdalla & another (Environmental and Land Originating Summons E007 of 2024) [2024] KEELC 898 (KLR) (26 February 2024) (Ruling)

Neutral citation: [2024] KEELC 898 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2024
FM NJOROGE, J
FEBRUARY 26, 2024**

BETWEEN

- EDARUS SALIM HUSSEIN 1ST PLAINTIFF**
- SOFIYA SALIM HUSSEIN 2ND PLAINTIFF**
- ZENA SALIM HUSSEIN 3RD PLAINTIFF**
- SALMA SALIM HUSSEIN 4TH PLAINTIFF**
- NOOR AHMED SALIM 5TH PLAINTIFF**
- GHALIB AHMED ALWLY 6TH PLAINTIFF**
- AISHA OMAR MOHAMED 7TH PLAINTIFF**

AND

- ANWAR SHEIKH SAID ABDALLA 1ST DEFENDANT**
- REGISTRAR OF LANDS, LAMU 2ND DEFENDANT**

RULING

1. For determination is the Plaintiffs’ Notice of Motion dated 4th December 2023 filed on 25th January 2024 alongside a plaint dated 29th September 2023. In the said application brought under section 1A, 1B, and 3A of the Civil Procedure Act and Order 40 Rule 1, 2 and 3 of the Rules thereon, the Plaintiffs seek the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That the court be pleased to grant an injunction restraining the 1st Defendant whether by himself, her agents and/or servants from interfering with the plaintiffs’ quiet enjoyment of



the suit property (Land Title Number Lamu/Block II/116 situate in Lamu) pending the determination of this suit.

- d. The costs of the application be provided for.
 - e. The honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. The application is premised on the grounds set forth in the Notice of Motion and the Supporting Affidavit of Ghalib Ahmed Alwi, the 7th Plaintiff herein, sworn on 4th December 2023. The 7th Plaintiff deposed that there has been a long running dispute over the land Title Number Lamu/Block II/116 situate in Lamu County (the suit property) between the parties herein. The Plaintiffs allege that they have always resided on the suit property and that the alleged transfer to the 1st Defendant was fraudulent; that despite the dispute being under investigation at the DCI offices, the 1st Defendant has on various attempts threatened the Plaintiffs with goons so as to evict them.
 3. The application is opposed by the 1st Defendant. He filed a replying affidavit dated 31st January 2024 stating that he is the registered owner of the suit property having purchased the same from Shariffa Binti Salim and Shekha Hamed Abdalla. He denied the existence of any squatters on the said land and upon being served with this suit he established that the Plaintiffs had previously and unsuccessfully filed several suits against the said vendors. He deposed that in Malindi ELC Petition No 24 of 2021, the same Plaintiffs herein sought to acquire the suit property by way of adverse possession, petition which was dismissed. To the 1st Defendant, the present suit and application are an abuse of the court process.
 4. The application was heard by way of written submissions. As at the time of writing this opinion, only the Plaintiffs had filed their submissions which I have carefully considered. The sole issue for determination is whether the Plaintiffs have met the conditions for the grant of a temporary injunction.

Analysis And Determination

5. It is settled that the conditions that one must meet in order for the court to grant a temporary injunction are first, an applicant must show that he has a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience. (See case of *Giella v Cassman Brown & Company Ltd* 1973 EA 358)
6. The question that follows therefore is have the Plaintiffs in this case established a *prima facie* case with a probability of success?
7. In the case of *Mrao v First American Bank of Kenya Limited* (2003) eKLR, Bosire JA (as he then was) described *prima facie* in the following terms:

“A *prima facie* case is one which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
8. Further, in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR the Court of Appeal restated the law as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;



- a. establish his case only at a prima facie level, (b) demonstrate 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.
 - b. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. ... If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.” (emphasis mine).”
9. In the present case, the Plaintiffs have alleged that they are in occupation of the suit property. The 1st Defendant denied this allegation stating that the suit property is fenced and properly guarded. There is no doubt that the suit property is registered in the name of the 1st Defendant. I am also not convinced that the Plaintiffs are in occupation of the suit property. There is no evidence to substantiate the Plaintiffs’ allegation. In the circumstances, I find that the Plaintiffs have failed to establish a prima facie case.
10. Indeed, on a cursory perusal of the police report annexed to their supporting affidavit, the Plaintiffs stated that the suit property is their shamba in which they planted mango and coconut trees sixty years ago. The said report does not state that the Plaintiffs are in physical occupation of the suit property. Be that as it may, and assuming this is the correct position, destruction of the said trees, if at all, would not amount to irreparable injury that may not be compensated by way of damages.
11. The outcome is that the notice of motion dated 4th December 2023 lacks merit, it is hereby dismissed with costs. Parties shall comply with the civil procedure rules by filing their trial bundles duly paginated and indexed within 21 days for the plaintiff and within 42 days from today for the defendants and the matter shall be mentioned on 22/5/2024 for issuance of a hearing date for the main suit.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 26TH DAY OF FEBRUARY 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

