



**Mangu v Salem Block Limited (Environment & Land Case
E043 of 2023) [2024] KEELC 735 (KLR) (19 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 735 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E043 OF 2023
CA OCHIENG, J
FEBRUARY 19, 2024**

BETWEEN

GIDEON MANGU ALIAS GIDEON SARRY MANGU PLAINTIFF

AND

SALEM BLOCK LIMITED DEFENDANT

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion Application dated the 17th October, 2023 where he seeks the following Orders:-
 1. Spent
 2. Spent
 3. That pending the hearing and determination of the suit herein, a temporary injunction do issue restraining the Defendants by themselves, their principals, partners, agents, employees, servants and any other person acting under their authority from trespassing, remaining in occupation, entering, occupying, harvesting stones and or undertaking quarry activities, transferring, disposing of, dealing and or in any manner interfering with the Plaintiff's ownership, occupation, possession and use of all that parcel of land known Land Reference Number 26681/18 situate at Athi River area, Mavoko, within Machakos County.
 4. That the Police Officer Commanding Athi River Police Station, Machakos County do assist in the service and implementation of the court orders herein.
 5. That costs of the Application herein be provided for Defendant/ Respondent.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Gideon Mangu alias Gideon Sarry Mangu where he deposes that he is the registered proprietor of Land Reference Number 26681/18 situate at Athi River area, Mavoko, hereinafter referred to as the 'suit



land'. He confirms that he purchased the suit land in 2013 from the Deliverance Church and transfer was duly registered in his favour as IR 120489. He claims in 2023, the Defendant by itself or agents trespassed on the suit land, purported to mobilize and install stone harvesting machinery and is now purporting to carry out activities of a quarry. Further, that he only discovered the illegal entry on 29th September, 2023. He contends that he has been paying land rent and rates to the County Government. He reiterates that the illegal activities the Defendant is carrying on the suit land is degrading and devaluing it and there are now gaping valleys, gorges, furrows and trenches therein. He insists the Defendant has no known legal claim over the suit land.

3. The Defendant opposed the Application by filing a Further Affidavit sworn by its Manager Salman Yaqub. He deposes that there is a quarry plot being excavated right adjacent to the Defendant's leased portion which is still in operation. He insists that the two quarries are extant on the same parcel of land and as such it is incomprehensible why the injunctive orders are only being sought against the Defendant company. He argues that interim orders are principally issued to maintain status quo pending determination of an Application or suit. He claims the Defendant company has been in operation on the leased property for the last three (3) years and has consequently become an integral part of the economic ecosystem of the local area. Further, that maintaining status quo would therefore entail allowing the operations of the Defendant company to continue pending the Ruling slated for 19th February, 2024 and pending the final determination of the main suit. He explains that the interim orders currently in place are highly financially prejudicial to the Defendant company. He contends that the Defendant is situate on Land Reference 12610/38 and not Land Reference Number 26681/18 of which property they have a duly registered lease together with all the necessary government approvals. He reiterates that the Defendant is legally operating on the suit land pursuant to a registered Lease dated the 28th July, 2020. Further, that the issues in dispute in this matter may be justly determined by this court without putting a halt on the operations of the Defendant company.
4. The Plaintiff filed a Supplementary Affidavit reiterating his averments as per the Supporting Affidavit and insists that the Defendant is not a party to ELC No. 140 of 2019. He referred to the order of status quo issued on 24th November, 2020 and contends that this did not allow the Defendant to proceed with excavation. He insists that the Defendant though not a party in ELC No. 140 of 2019, was aware of the existence of the status quo orders. He reaffirms that the Defendant has not been harvesting stones for three (3) years as claimed but as at 24th November, 2020, there was no activity on the suit land.

The Application was canvassed by way of written submissions.

Analysis and Determination

5. Upon consideration of the Plaintiff's Notice of Motion Application dated the 17th October, 2023 including the parties' affidavits and rivaling submissions, the only issue for determination is whether the Plaintiff is entitled to orders of interlocutory injunction pending the outcome of the suit.
6. The Plaintiff in his submissions reiterated his averments as per the respective Affidavits and insisted that he had established a *prima facie* case to warrant the orders of injunction as sought. To support his arguments, he relied on the following decisions: *Giella V Cassman Brown & Co. Ltd* (1973) EA 358; *Mrao Ltd v First American Bank of Kenya & 2 Others* (2003) KLR 125; *Nguruman Limited V Jan Bonde Nielsen & 2 Others* (2014) eKLR; *Syokimau Bright Homes Ltd v East Africa Portland Cement* (2021) eKLR and *Hezron Kamau Gichuri v Kianjoya Enterprises Ltd & Another* (2022) eKLR.
7. The Defendant in its submissions reiterated its averments as per their Further Affidavit and insisted that the Plaintiff is guilty of material non-disclosure. Further, that this suit is sub judice. It insisted that the Plaintiff has not established a *prima facie* case with a probability of success at the trial. To support



its arguments, it relied on the following decisions: Babadurali Ebrahim Shamji v Al Noor Jamal & 2 Others Civil Appeal No. 210 of 1997; Halima Haji Sarah v Multiple Hauliers (EA) Limited & Another (2022) eKLR; David Ndiu & Others v Attorney General & Others (2021) eKLR; Kenya Breweries Association v Kenya Revenue Authority (2019) eKLR; Giella V Cassman Brown & Co. Ltd (1973) EA 358; Syokimau Bright Homes Ltd v East Africa Portland Cement (2021) eKLR; Paul Gitonga Wanjau v Gathuthis Teas Factory Company & 2 Others (2016) eKLR and Peter Muriuki Ngure v Equity Bank (K) Ltd (2018) eKLR.

8. As to whether the Plaintiff has established a *prima facie* case with a probability of success at the trial, I wish to rely on the principles established in the case of Giella v Cassman Brown & Company (1973) EA 358 as well as the description of a *prima facie* case as espoused in the case of Mrao Ltd v First American Bank of Kenya & 2 Others (2003) KLR 125. In this instance, the Plaintiff has sought for orders of interlocutory injunction against the Defendant claiming he is the proprietor of the suit land but the Defendant is carrying out quarrying activities thereon. The Defendant insists it has a registered Lease on the suit land that enables it carry out quarrying activities. Further, that there is a related suit being ELC No. 140 of 2019 wherein the Court had issued orders of status quo hence it was allowed to carry out quarrying activities. The Plaintiff has not denied being a party in ELC No. 140 of 2019 but contends that the Defendant is not a party therein. For the avoidance of doubt, I wish to reproduce the order issued in ELC No. 140 of 2019 on 24th November, 2020 where Justice Angote directed that:-
 1. That the Defendant to file submissions within twenty one (21) days in respect of the Preliminary Objection and the Respondent to file and serve submissions within twenty one (21) days of service.
 2. That mention on 11th May, 2021.
 3. That order of status quo be maintained until 11th May, 2021.
 4. That none of the parties to this suit should develop, construct, sell or change the status of this suit property in any manner whatsoever until 11th May, 2021.”
9. The Defendant claims it has a registered Lease which I note was entered into on 28th July, 2020, during the pendency of ELC No. 140 of 2019 and after orders of status quo had been issued. I note the Plaintiff is a registered proprietor of the suit land and has a Certificate of Title to that effect. The Defendant has not explained if the Lessors were registered proprietors of the suit land. The Defendant has not produced a Certificate of Title to the leased land in the Lessors’ names. From a reading of the court order I have cited above, I note the Defendant’s actions of undertaking quarrying activities is actually contrary to the court order as no party was allowed to change the status of the suit land. The Defendant has not denied that there are trenches, valleys and gorges on the suit land which in essence means, its quarrying activities have indeed altered the disputed land.
10. Looking at the documents presented, I opine that since the Plaintiff is the registered proprietor of the suit land which the Defendant is undertaking quarrying on, he indeed has a valid claim.
11. Based on the facts before court including the documents presented while associating myself with the cited decisions, noting that the Plaintiff is the registered proprietor of the suit land since 4th December, 2013, at this juncture, I find that the Plaintiff has established a *prima facie* case as against the Defendant. In associating myself with the findings in Nguruman Limited V Jan Bonde Nielsen & 2 Others (2014) eKLR, I find that the Plaintiff will suffer irreparable harm which cannot be compensated by way of damages if the orders sought are not granted as his injuries are not speculative.



12. Further, in noting that the orders of status quo in ELC No. 140 of 2019 were violated by the Defendant that had continued to undertake quarrying activities on the suit land, I find that the balance of convenience tilts in the Plaintiff's favour.
13. It is against the foregoing, that I find the Plaintiff's Notice of Motion Application dated the 17th October, 2023 merited but since there is a related suit being ELC No. 140 of 2019, I will allow it in the following terms:-
 - i. That obtaining status quo be and is hereby maintained order where no party should lease, develop, construct, sell or change the status of this suit land in any manner whatsoever pending the hearing and determination of this suit.
 - ii. Costs will abide the outcome of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 19TH DAY OF FEBRUARY, 2024

CHRISTINE OCHIENG

JUDGE

