



Ethics and Anti-Corruption Commission v Michuka & 3 others (Environment & Land Case E015 of 2023) [2024] KEELC 653 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEELC 653 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E015 OF 2023
JO OLOLA, J
FEBRUARY 15, 2024**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

LABAN CHILUYI MICHUKA 1ST DEFENDANT

EPHANTUS MABU MATE 2ND DEFENDANT

GRACE MUTHONI MUKUHA 3RD DEFENDANT

WILSON GACHANJA 4TH DEFENDANT

RULING

1. By the Notice of Motion dated and filed herein on 16th March 2023, the Ethics and Anti-Corruption Commission (the Plaintiff) prays for a temporary order of injunction to issue restraining the 3rd Defendant by herself, her servants or agents from dealing by way of sale, transfer, mortgage, development or by any other manner whatsoever with all that parcel of land known as Nyeri Municipality Block 1/1079.
2. The application is supported by the Plaintiff's Investigations Officer Simon Lei who deposes that the Plaintiff has commenced investigations into the subject matter of this suit after it received a complaint that the same was previously a Government house which had been irregularly and unlawfully alienated to a private individual.
3. The Plaintiff further avers that its investigations have so far revealed that the suit property was indeed public land situated within Nyeri town and known as Government House No. HG 10 and 21. It is the Plaintiff's case that the land was not available for allocation since it was already committed to the State Department of Housing and the Plaintiff therefore seeks to recover the same and to revert it to the public.



4. In response to the application, Grace Gathoni Mukuha (the 3rd Defendant) has sworn a Replying Affidavit filed herein on 24th July, 2023 opposing the grant of the said orders. The 3rd Defendant asserts that on 9th July 2002 after conducting due diligence and obtaining a Certificate of Official Search from the Lands Office at Nyeri, she entered into a sale agreement with the 2nd Defendant whereby she purchased the suit land for a consideration of KShs.400,000/-.
5. The 3rd Defendant avers that she thereafter took possession of the land and extensively developed it by constructing a five room bungalow which she has been utilising as her home and to discharge her duties as an Advocate.
6. The 3rd Defendant further avers that she duly obtained consent from the Government of Kenya and had paid all the necessary stamp duty and transfer fees. It is further her case that when she did purchase the suit land, the title was free from any encumbrance and that she was therefore a bona fide purchaser for value without notice.
7. By the application before the court, the Plaintiff prays for an order of injunction to issue restraining the 3rd Defendant by herself her agents and/or servants from selling, transferring, mortgaging, developing or in any other manner whatsoever dealing with the parcel of land known as Nyeri Municipality Block 1/1079 pending the hearing and determination of this suit.
8. In regard to the issuance of an order of injunction, order 40 rule 1 of the Civil Procedure Rules provides as follows:

“Where in any suit it is proved by affidavit or otherwise –

- (a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purposes of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.”

9. As was stated in the celebrated case of *Giella v Cassman Brown* [1973] EA 358:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable 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 a balance of convenience.”

10. In the matter before me, the Plaintiff had initially obtained orders preserving the subject matter of investigations for a period of six (6) months on 26th September, 2022 under Section 56 of the Anti-Corruption and Economic Crimes Act. The period having lapsed before the investigations were completed, the Plaintiff now urges the Court to grant a temporary order of injunction pending the hearing and determination of this suit.



11. A review of the pleadings in the main suit and this application reveals that the main contention is the circumstances under which the suit property was acquired by the 1st, 2nd and 3rd Defendants through the 4th Defendant who was at the time the Commissioner of Lands. It is contended that the suit property was previously a Government house falling under the State Department for Housing and that the same was not available for alienation at the time the 1st Defendant acquired the same.
12. The 3rd Defendant in whose name the property is currently registered avers on her part that she did lawfully acquire the suit property from the 2nd Defendant who had in turn acquired the same from the 1st Defendant. It is further her case that she had duly obtained consent from the Government of Kenya and had paid all the necessary stamp duty and transfer fees due for the land.
13. In my considered view, the Plaintiff has for the purposes of this application demonstrated the suit property was initially public land and that there is need to interrogate the circumstances under which the same was allocated to the 1st Defendant herein. The Plaintiff has therefore demonstrated that it has a prima facie case against the Defendants that would require for the Defendants to be called upon to make a rebuttal.
14. On the second limb of *Giella v Cassman Brown* (supra), I am also satisfied that the Plaintiff has demonstrated that the citizens of the Republic of Kenya stand to suffer irreparable loss incapable of compensation if the 3rd Defendant was to proceed and alienate the suit property. If the house and the land on which it stands is disposed of, the Plaintiff will have nothing to recover in furtherance of its statutory mandate were the suit to succeed. There is therefore the need to preserve the property pending the hearing and determination of the suit.
15. As was stated in *Kenya Anti-Corruption Commission v Stanley Mumbo Amuti* [2011] eKLR:

“An order of forfeiture can only be made if the property was still available for such forfeiture and it follows therefore that if there was no conservatory order, the property may well have ceased to exist thus rendering the success of appeal pyrrhic.”
16. I do note however that it was not disputed by the Plaintiff that the 3rd Defendant has since the year 2002 when the property came into her hands established her home and resides on the suit property.
17. In the circumstances and in order not to disrupt her stay therein as investigations are concluded, I think an order of status quo would be most appropriate in the circumstances.
18. Accordingly I hereby direct and order that the status quo prevailing as of today be maintained by both Parties pending the hearing and determination of this suit. By the said order of status quo, the Defendant is hereby restrained from dealing with the suit by way of sale, transfer, mortgage, or in any manner that may lead to its alienation from her current proprietorship thereof
19. The costs of this application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 15TH DAY OF FEBRUARY, 2024.**

In the presence of

Ms Omari for the Applicant

Mr. Ng'ang'a for the 2nd Defendant



No appearance for 1st, 3rd and 4th Defendants

Court assistant - Kendi

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J. O. OLOLA

JUDGE

