



**Yusuf & another (As Administrators of the Estate of Yusuf Wayu Wario - Deceased) v  
County Land Adjudication & Settlement Officer-Mombasa & 3 others (Environment  
& Land Petition E001 of 2024) [2024] KEELC 1467 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1467 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**  
**ENVIRONMENT & LAND PETITION E001 OF 2024**  
**NA MATHEKA, J**  
**MARCH 19, 2024**

**BETWEEN**

**SAID HIRIBAE YUSUF ..... 1<sup>ST</sup> PETITIONER**  
**WARIO YUSUF DOYO ..... 2<sup>ND</sup> PETITIONER**  
**AS ADMINISTRATORS OF THE ESTATE OF YUSUF WAYU WARIO -**  
**DECEASED**

**AND**

**COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER-**  
**MOMBASA ..... 1<sup>ST</sup> RESPONDENT**  
**LAND REGISTRAR, MOMBASA ..... 2<sup>ND</sup> RESPONDENT**  
**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**  
**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The application is dated 1<sup>st</sup> December 2023 and is brought under Articles 19, 20, 21, 22, 23, 40, 47 & 48 of the *Constitution* of Kenya, and Rules 3, 4, 10, 11, 19 and 23 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013) seeking the following orders;
  1. That this matter be certified as extremely urgent and service be dispensed with in the first instance.
  2. That this Honourable Court be pleased to issue a temporary injunction against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, their agents, servants, employees and/or anyone under them, jointly and severally, to restrain them from registering, issuing title and/or otherwise dealing with



the property known as Mombasa/Mwembe/Legeza/1145 in favour of the 4<sup>th</sup> Respondent, pending the hearing and determination of this Application and suit.

3. That in the alternative. the court issues an order for status quo pending the hearing and determination of the application herein and suit.
  4. That this Honourable Court makes such other Orders it deems fit in the circumstances.
  5. That this Honourable Court grants costs of the Application,
2. It is based on the following grounds that the Applicants are the Administrators of their deceased father's estate, Yusuf Wayu Wario. That the Applicants' father was allocated the land on 1<sup>st</sup> December, 1998. That the Applicants obtained records from the 1<sup>st</sup> Respondent's office to ascertain ownership and presented the same to the Kadhi's Court in Mombasa Kadhi's Succession Cause no. E071 of 2020. That on the strength of the orders from the Kadhi's court and the available records with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents offices, title was issued to the applicants, upon payment of the requisite fees on 9<sup>th</sup> October, 2023. That the Applicants have always been in occupation and/or use of the said parcel of land. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have initiated the process of recall of title, for the property known as Plot Number Mombasa/Mwembe/Legeza/1145. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents purport to grant ownership to the 4<sup>th</sup> Respondent albeit unlawfully and/or illegally. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed, refused and/or neglected to discharge the charge to the settlement Fund Trustees, despite the Applicants having cleared the said amounts, making the property unencumbered. That the Applicants have unsuccessfully approached the 1<sup>st</sup> and 2<sup>nd</sup> Respondents with a view to settling the matter herein, rendering the suit herein absolutely necessary.
3. This court has considered the application, supporting affidavit and the annexures therein. The respondents were served but failed to file any response. 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.
4. 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”.
5. The plaintiffs claim that they are the legal owner of the suit property known as Plot Number Mombasa/Mwembe/Legeza/1145. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have initiated the process of recall of title, for the property known as Plot Number Mombasa/Mwembe/Legeza/1145. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents purport to grant ownership to the 4<sup>th</sup> Respondent. 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.”
6. On temporary injunctions, the plaintiff is 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 1<sup>st</sup> plaintiff in his supporting affidavit has alleged that Applicants are the Administrators of their deceased father's estate, Yusuf Wayu Wario. That the Applicants' father was allocated the land on 1<sup>st</sup> December, 1998. That the Applicants obtained records from the 1<sup>st</sup> Respondent's office to ascertain ownership and presented the same to the Kadhi's Court in Mombasa Kadhi's Succession Cause no. E071 of 2020. That on the strength of the orders from the Kadhi's court and the available records with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents offices, title was issued to the applicants, upon payment of the requisite fees on 9<sup>th</sup> October, 2023 (“SHY-6”). That the Applicants have always been in occupation and/or use of the said parcel of land. I find that the Applicants have established a prima facie case in this matter
8. On the issue of 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.

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. The Applicant state that they are in possession of the suit property and I find that the balance of convenience tilts in their favour. I find that this application is merited and order that the status quo be maintained pending the hearing and determination of this suit. There will be no orders as to costs as the application was undefended. Parties are advised to comply with order 11 and fix the matter for hearing.
10. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 19<sup>TH</sup> DAY OF MARCH 2024.**

**N.A. MATHEKA**

**JUDGE**

