



**Ruto v Chebusit & 16 others (Environment & Land Case  
259 of 2018) [2024] KEELC 1490 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1490 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 259 OF 2018**

**A OMBWAYO, J  
MARCH 14, 2024**

**BETWEEN**

**CHEPKONGA ARAP RUTO ..... PLAINTIFF**

**AND**

**AMBROSE KIPROTICH ARAP CHEBUSIT & 16 OTHERS ..... RESPONDENT**

**RULING**

**Brief Facts**

1. The applicant has come to court vide two applications. The 1<sup>st</sup> application is dated 6<sup>th</sup> December 2023 and seeks the setting aside of the order made on 25<sup>th</sup> July 2022 dismissing the suit for want of prosecution. I have considered the application and reasons given and the reply by the respondent and do find that the applicant was undergoing medication and was truly unwell and that he is now following his case vigorously. I do allow the application and the suit is hereby reinstated. The Plaintiff/Applicant filed the second application dated 19<sup>th</sup> January, 2024 seeking the following orders:Spent.
  1. That the Honourable court be pleased to grant an order of injunction restraining the Defendants and his agents from their illegal interference with the plots Nakuru Municipality block 29/1040, 1041, 1042, 1043, 1044, 1049, 1050 and 1051 respectively.
  2. That pending the hearing and determination of this suit this court be pleased to issue a permanent injunction restraining Jackson Kemboi and his agents and proxies from further intermeddling or sand harvesting of plots Nakuru Municipality 29/1040, 1041, 1042, 1043, 1044, 1049, 1050 and 1051 respectively.
  3. That cost of this application be provided for.
2. The Application was based on grounds set out and supported by the Affidavit of Chepkonga Arap Ruto the Applicant herein sworn on 19<sup>th</sup> January, 2024.



3. The Plaintiff/Applicant stated that he is the absolute owner of the suit property. That the Defendants/ Respondents illegally acquired title deeds which formed the basis of this case.
4. That introduction of the deceased's next of kin Samuel Muref in this suit would end his miseries and suffering he has encountered from the Defendants/Respondents actions. He further stated that the 6<sup>th</sup> Defendant/Respondent has continued with the sand harvesting disregarding the court cases the Applicant had with his father.
5. The Plaintiff/Applicant also filed a Supplementary Affidavit dated 20<sup>th</sup> February, 2024 where he reiterated his supporting affidavit. He added that he was a member of the Kalenjini Enterprises and acquired the suit property from the previous owner Teres Murei vide sale agreement dated 16<sup>th</sup> February, 1990. He stated that he had been sick from 2018 and that he attached medical reports to confirm the same.
6. He also stated that as a result of the Defendant/Respondent's action, there was filed numerous criminal cases which took about 18 years all of which ended up being dismissed for malicious prosecution. The Plaintiff/Applicant stated that the Defendant/Respondent admitted that he is illegally in occupation of the land.
7. In conclusion, the Applicant urged the court to allow the instant application as prayed.

### **Response**

8. This court has perused the court file and noted that the Plaintiff/Applicant in his supplementary affidavit referred to a replying affidavit by the Defendant/Respondent which is not on record.

### **Submissions**

9. The Plaintiff/Applicant filed his submissions on 30<sup>th</sup> January, 2024 and submitted that he has been sick from 2018 to date and annexed his medical report.

### **Analysis and Determination**

10. This court has considered the application and supporting affidavit and is of the view that the main issue for determination is whether the Plaintiff/Applicant is entitled to an order of injunction.
11. In the instant case, the Plaintiff/Applicant seeks a permanent injunction which cannot be granted at this interlocutory stage. It is important to note that the same can only be granted after hearing the case on merit. In the case of *Kenya Power & Lightning Company Ltd v Sheriff Molan Habib* [2018] eKLR the court with regard to permanent injunction held as follows: -

"It determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merit of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the Defendant in order for the rights of the Plaintiff to be protected."

12. It is this court's view that it would be premature for the court to grant a permanent injunction at this interlocutory stage without having taken the evidence of the parties. However, this court notes that the Plaintiff/Applicant does not have legal representation and it is possible that what he meant to pray for was an order of temporary injunction. I shall therefore consider if the Plaintiff/Applicant has met the conditions for temporary injunction.



13. The principles upon which the court should grant an injunction were set out in the case of *Giella v Cassman Brown & Company Ltd* 1973 EA 358 as follows:

"First, the 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."

14. In the case of *Mrao v First American Bank of Kenya Limited* (2003) eKLR Bosire JA (as he then was) stated as follows:

"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"

15. The Plaintiff/Applicant contends that he acquired the suit properties Teres Murei vide a sale agreement on 16<sup>th</sup> February, 1990. He also contends that the Defendant/Respondent illegally acquired the suit property. This court has perused the court record and it is a fact that there is no evidence of title in the Plaintiff/Applicant's name to confirm that he is the registered proprietor of the suit property.
16. On the other hand, the Defendant/Respondent did not respond to the said allegation and it is this court's view that the issue of ownership can only be determined after a full hearing of the case. The Plaintiff/Applicant has therefore not demonstrated that he has a prima facie case with a probability of success.
17. The Plaintiff/Applicant contends that the 6<sup>th</sup> Defendant/Respondent is doing sand harvesting disregarding the court cases the Applicant had with his father. It is this court's view that the Plaintiff/Applicant bases his case on a criminal matter which this court has nothing to do with as the issue of ownership is yet to be determined. Therefore, I find that he has not demonstrated that it will suffer irreparable injury that cannot be compensated by damages if an injunction is not granted.
18. Having considered the Plaintiff/Applicant's application is clear that he intends to challenge the Defendant/Respondent's title to the suit property. However, the Defendant/Respondent is yet filed his response and pleadings and thus the only material before the court is that exhibited by the Plaintiff/Applicant.
19. In the upshot, I find that the Applicant is therefore not deserving of the orders sought. Consequently, I find and hold that the balance of convenience tilts in favour of, and I do grant an order maintaining the *status quo* pending the hearing and determination of the main suit. In addition, this order shall remain in force for a period of six months to enable the parties to comply with Order 11 of the [Civil Procedure Rules](#) so as to expedite the hearing of this case. The costs of the application shall be in the cause.
20. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NAKURU VIRTUALLY THIS 14<sup>TH</sup> DAY OF MARCH 2024.**

**A.O .OMBWAYO**

**JUDGE**

