



**Yego v Thuo (Environment & Land Case E051 of 2023)
[2024] KEELC 3547 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3547 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E051 OF 2023**

**A OMBWAYO, J
APRIL 26, 2024**

BETWEEN

BENJAMIN CHEBOI YEGO PLAINTIFF

AND

JOHN THUO DEFENDANT

RULING

1. Kenneth Evan Thiongo, Fred Ouma Muhando and Benjamin Cheboi Yego have sued John Thuo praying for a declaration that the plaintiffs are the legally registered owners of all that property known as Njoro/Township Block 62/68. The plaintiffs pray that pending the hearing and determination of the suit there be an order restraining the defendant from trespassing, interfering, alienating, disposing, occupying, tilling subletting, constructing and or dealing in any manner whatsoever with the suit property.
2. The plaintiffs have annexed a certificate of lease issued on 23rd January 2023. The certificate of lease shows that the register was opened on 23rd January 2023 and title issued on the same date.
3. The applicants have also produced an allotment letter issued on 9th February 1998 to the applicant and an acceptance letter dated 12th July, 2022 in respect of plot LR No.519/353, 24 years after allotment.
4. John Thuo filed a replying affidavit raising many issues inter alia that he is the registered owner of LR Number 519/453 that had been granted to Dickson Ngugi Ngugi *vide* a letter dated 7th January 1986. The defendant purchased the land from Mr. Ngugi at Kshs35,000,000. The defendant had a legal dispute with Mr Ngugi in respect of the suit land in which this court awarded the defendant the suit land. The defendant states that the allotment letter issued to the plaintiffs is suspect as the land was already alienated and therefore not available for alienation by the Commissioner of Lands.
5. Moreover, that the acceptance was made more than 23 years after allotment instead of the 3 months required by the allotment.



6. The grant of temporary injunction is granted by Order 40 Rule 1 of the *Civil Procedure Rules* 2010 which provides that:-
1. Cases in which temporary injunction may be granted [Order 40, rule 1]
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 purpose 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.
 7. In this case, the plaintiffs do not satisfy the requirement that they should demonstrate a prima facie case with a probability of success because the suit land has been subject of a suit whereby this court has found that the defendant is entitled to the same. Moreover, the allotment letter issued to the plaintiffs was issued by the Commissioner of Lands in respect of alienated Government Land as opposed to unalienated Government land and that the acceptance was made 23 years later when there was case number Nakuru ELC number E86 of 2021 pending in court in respect of the suit property and that the certificate of lease issued on 23rd January 2023 was issued when this suit was pending in court.
 8. The balance of convenience tilts towards dismissing the application because the application have not demonstrated that they will suffer greatly if the injunction is not granted on the contrary the defendant has demonstrated that he will suffer greater inconvenience if injunction is granted because he is in possession of the land since the year 2007 and has developed the same. In conclusion, I do find that the injunction is not merited and the application is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF APRIL 2024.

A O OMBWAYO
JUDGE

