



REPUBLIC OF KENYA



KENYA LAW
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**Omito & 680 others v Kirima & another (Environment & Land Case
337 of 2019) [2024] KEELC 3470 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3470 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 337 OF 2019**

AA OMOLLO, J

APRIL 24, 2024

BETWEEN

JOSEPH OMITO & 680 OTHERS APPLICANT

AND

ANNE WANGARI KIRIMA 1ST RESPONDENT

TERESIA WAIRIMU KIRIMA 2ND RESPONDENT

RULING

1. The Applicants filed a notice of motion dated 31st October 2023 seeking for the following orders;
 1. Spent
 2. That this Honorable Court be pleased to issue Orders of injunction restraining the respondent either by themselves, agents, employees and/or servants or anyone deriving authority from them from evicting, trespassing, selling, transferring assigning alienating and/or in any other way interfering with the quite enjoyment of the 65 acres within LR 6825/2.
2. The motion was based on the grounds outlined in the application and in the annexed affidavit sworn on 31st October 2023 by Hassan Abdi Adan who stated that he had authority from the co-applicants to swear the affidavit. He deposed stated that a Judgement was delivered on Nairobi ELC 1257 of 2014 on 23rd October 2023 whose effect was an Order of eviction against the squatters and by extent any persons occupying the 80 hectares of the Respondents' land known as LR No. 6825/2 referred herein as "the suit property."
3. He stated that the suit property is 472.5 acres and the applicants are occupying 65 acres of the said land. He avers that this matter was ordered to be consolidated and kept side by side with ELC 1257 of 2014, ELC 252 of 2021, ELC 509 of 2014, ELC 1496 of 2013, ELC 1318 of 2013 and ELC 850 OF 2014. That this matter was not fully heard, as they were waiting the Judgement in the consolidated matter.



4. That if the eviction ordered is carried out will be in Section 152B, 152C and 152D of the Land Act 2012 and Applicants are apprehensive that the Respondents are likely not to follow the eviction in line with the Article 2(5) and 6 of the Constitution as read together with the United Nations guidelines or Evictions as enunciated by the United Nations Office of the high commissioner for Human Rights in General Comment No. 7(General Comment) and also the UN Basic Principles and Guidelines on Development based Eviction and Displacement UN Eviction Guidelines).
5. The Applicants contended that they are cognizant of the cases in Mitu bell case, Satros Ayuma case and Susan Waitibera case where the court made several pronouncements in respect to eviction and are seeking the court's intervention for injunctory relief for them to be heard Viva Voce.

Replying Affidavit

6. The Application was vehemently opposed by the 1st Respondent vide replying affidavit sworn by Teresia Wairimu Kirima on 22nd November 2023 stating that she reiterates the contents of her entire Replying Affidavit sworn and filed on the 13th November 2019 and also rely on all the annexures thereto which have been attached and marked TWK-I. She deposed that the Applicants have progressively encroached and continued to trespass on the suit property between 2013 and 2022 in blatant breach and in disregard of the express orders issued by this Honorable court in HCSC No. 1298 of 2011 dated 3rd April 2013 and HCELC No. 1257 of 2014 dated 24th March 2015 as referred in the replying affidavit to the Originating Summons.
7. She stated that when this matter came up for mention on the 21st July 2022, the Honorable Justice Okong'o having regard to the pleadings and nature of claim by the Applicants, which was the same on all fours with those of Applicants in ELC No. 1257 of 2014, with the consent of Counsel for both parties, directed that the same awaits the outcome of judgment of ELC No. 1257 of 2014 which is the judgement in subject. That the Applicants are in full knowledge of the consequences, have been unable to establish the merit of the orders sought and that they are a tainted lot undeserving of any or the equitable relief sought.
8. She stated that the Applicants in consistent with the fraudulent modus operandi and continued encroachment, are seeking orders from being evicted on 65 acres and not the 58 acres pleaded in the Originating Summons noting that the court in the final judgment delivered on the 23rd October 2023 placed the ownership of the suit property beyond par-adventure.

Submissions

9. The Applicants and the 1st Respondent filed submissions dated 7th December 2023 and 6th February 2024 respectively. In reliance to the cases of Giella v Cassman Brown (1973) EA 358; Nguruman Limited v Jan Bonde Nielsen & 2 others CA No. 77 of 2012 (2014) eKLR; and Kipchirchir Kogo v Frank Kimeli Tenai (2018) eKLR the Applicants submitted that they are at risk of losing all their lifetime investments in housing and economic development as no alternative was given to them upon the impeding demolitions.
10. Further with regard to balance of convenience, the Applicants relied in the case of Amir Suleiman v Amboseli Resort Limited [2004] eKLR; Hezron Kamau Gichuru v Kianjoya Enterprises Ltd & Ano. (2022) eKLR among others to pray that the court do issue an order of injunction sought.
11. The 1st Respondent submitted that the Supporting Affidavit by Hassan Abdi Adan stated that he had authority to swear the same on behalf of the 545 Applicants but from the record there was no such



authority attached thus the affidavit is incompetent and in support cited the case of Misc. Application No. 1495 of 2016: *Bishop Patrick Baligasiima v Kiiza Daniel & 15 others*.

12. The 1st Respondent further submitted that there are no merits for injunction sought and in reliance to the principles set in the celebrated case of *Giella v Casma Brown & Company Limited* 119731 EA 358 that a party must satisfy to be entitled to an Order of injunction, and the Applicants have failed to meet the threshold. Also, that the Applicants have approached this Court with very tainted hands and are undeserving of the equitable relief sought.

Determination:

13. It is on record that a judgement was delivered on Nairobi ELC 1257 of 2014 on 23rd October 2023 which involved disputes in the consolidated suits relating to all those parcels of land known as L.T No. 5908/8 and LR No. 6852/2 (the suit property herein). That it was a direction of the trial court then that after the conclusion of the hearing, it would prepare one judgement which would deal with all cross-cutting issues touching on all the claimants and the Respondents in the various suits and it would apply to and bind all the parties in the said suits.
14. That all the suits would be classified as falling under the various outlined categories among them claims arising through adverse possession which is the claim in this instant suit. The effect of the judgment delivered being eviction of the Applicants from the suit property, made the Applicants to file this motion seeking for an order of injunction against the Respondents on the ground that they were awaiting the determination on the lead file, ELC No. 1257 of 2014 and that their case was not fully heard.
15. From the court proceedings I can see that in this instant suit, Counsel Ojienda for the Plaintiffs on 3/7/2023 stated that they are waiting for determination in ELC 1257 of 2014 confirming that they were fully aware of the consolidated suits which related to all those parcels of land known as L.T No. 5908/8 and LR No. 6852/2 Justice. Okong'o comprehensively pronounced himself on all the claims arising from all those parcels of land known as L.T No. 5908/8 and LR No. 6852/2 the suit property herein thus the parties herein are bound by the same Judgement.
16. Justice Mugo Kamau in the case of *Kennedy Mokuu Ongiri v John Nyasende Mosioma & Florence Nyamoita Nyasende* [2022] eKLR stated that;

“A Decision of the court must be respected as fundamental to any civilised and just judicial system. Judicial determinations must be final, binding and conclusive. There is injustice if a party is required to litigate afresh matters which have already been determined by the court.
A Decision of the court, unless set aside or quashed in a manner provided for by the law, must be accepted as incontrovertibly correct. These principles would be ‘substantially undermined’ if the Court were to revisit them every time a party is dissatisfied with an Order and goes back to the same Court particularly when there is a change of a Judicial Officer in the Court station.”
17. Consequently, unless the decision on Nairobi ELC 1257 of 2014 delivered on 23rd October 2023 is set aside or quashed in a manner provided for by the law, the same must be accepted as incontrovertibly correct and binding to the parties whose cases were consolidated. This court can only issue an order of injunction if the parties intend to move the court of appeal to challenge that decision but for maintaining an status quo by a party who does not disclose the next cause of action they intend to take.



18. The decree issued in ELC 1257 of 2014 as the lead file was self-executory and it gave the Applicants options to negotiate with the Respondents for a buy-out. Therefore, they have no legal basis to argue that they will suffer irreparable loss. I am not persuaded of any merit in the application which I proceed to dismiss with no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL, 2024

A. OMOLLO

JUDGE

