



Kamba Manufacturing (1986) Ltd v Kiambu Dandora Farmers Company Ltd; Lords Army Ministries (Interested Party) (Environment & Land Case 398 of 2019) [2024] KEELC 3897 (KLR) (18 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3897 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 398 OF 2019**

**AA OMOLLO, J
APRIL 18, 2024**

BETWEEN

KAMBA MANUFACTURING (1986) LTD PLAINTIFF

AND

KIAMBU DANDORA FARMERS COMPANY LTD DEFENDANT

AND

LORDS ARMY MINISTRIES INTERESTED PARTY

RULING

1. The Plaintiff filed a Notice of motion dated 17th August 2023 supported by an affidavit sworn on the same date by Shiraz G.K Ramji seeking for the following orders;
 1. Spent
 2. That this Honourable Court be pleased to issue summons to the O.C.S. Dandora Police Station to appear before this Court and give reasons why the Court Orders issued herein on 13th December 2019 and 23rd September 2020 were not complied with and were disregarded in his presence and/or with his knowledge.
 3. That this Honourable Court be pleased to issue an order authorizing the Plaintiff to demolish all structures erected on all that parcel of land known as L.R No. 209/9406 subsequent to the Court Orders issued herein on 13th December 2019 and 23rd September 2020.
 4. That this Honourable Court be pleased to issue an order authorizing the Plaintiff to construct a boundary wall on all that parcel of land known as L.R No. 209/9406.



5. That this Honourable Court be pleased to issue an order directing the O.C.S Mowlem Police Station and/or the O.C.P.D. Buruburu Police Station to ensure the protection of the Plaintiff as it implements Orders (4) and (5) above, and ensure that the said orders are complied with.
 6. Honourable Court be pleased to issue such other orders as may be fair and just in the circumstances.
 7. That the costs of this application be in the cause
2. The motion was based on the grounds that the Plaintiff legally purchased L.R No. 209/9406 situated in Dandora area of Nairobi County (hereinafter referred to as “the suit land”) from Kamba Manufacturing Limited at a consideration of Kenya Shillings Three Million (Kshs. 3,000,000.00). That the Plaintiff has in its custody the original title to the suit property and continues to fulfil all its obligations under the grant from the Government of Kenya. Further that the Plaintiff has owned and occupied the property for over 33 years uninterrupted.
 3. The Plaintiff stated that on 13th December, 2019, this Court ordered that the status quo prevailing as of that date relating to title, possession and use of the suit land be maintained and that the O.C.S Dandora Police Station was to ensure that the order was complied with. The said order was on 23rd September, 2020, by consent of the parties, extended to be in force pending the hearing and final determination of this suit or such further orders as the Court would direct.
 4. The Plaintiff contended that persons claiming to be agents of the Defendant have trespassed onto the Suit land and commenced the erection of a building without the consent of the Plaintiff and in violation of the Order. That the said constructions which include Eastlands Community Church and an unfinished building structure continue unabated and forcefully to the detriment of the Plaintiff's proprietary rights and in complete disregard of the Order.
 5. It avers that despite lodging an official complaint at the Mowlem Police Station, pursuant to referral and/or instructions from the O.C.S. Dandora Police Station which had been tasked with the compliance of the Order, the officers at Mowlem Police Station have completely refused to assist, commence any material investigations or stop the continuing disobedience of the Order. The Plaintiff stated that O.C.S Dandora Police station and the S.C.P.C Buru Buru Police Station were aware of the Order as seen in the correspondence between the two and in the absence of their assistance from the O.C.S. Mowlem Police Station.
 6. The Plaintiff contended that there is an imminent danger that the Suit land will be wasted, damaged further if this Court does not stop the ongoing contemptuous actions and that Defendant will not be prejudiced in any way since the Plaintiff is merely seeking to protect and preserve the Suit land.
 7. In opposing the motion, the Defendant filed a replying affidavit sworn on 16th October 2023 by Joseph Mwangi Karani, its director while the Interested Party filed grounds of opposition dated 23rd October 2023. The Defendant stated that on 13th December 2019, this court issued orders directing that status quo with regard to the suit land as of that date be maintained pending determination of the application which orders were subsequently extended to remain in place pending hearing and determination of the main suit.
 8. He deposed that on the 17th of August 2023, the plaintiff further filed a fresh application seeking to be allowed to enter on to the suit land and demolish structures thereon and to further be allowed to put up a perimeter wall around it. That despite of the existing orders as to maintenance of status quo, the plaintiff by themselves and /or their agents have instead entered on the suit land and are in the process of demolishing structures and putting up a perimeter wall around it.



9. Mr Karani on behalf of the Defendant argued that the actions by the Plaintiff either by themselves and or their agents are a blatant contempt of this Court's order and they reported the same to the police at Kwa Maji Police Station but did not received any assistance. He stated that they have been keen on prosecuting the substantive suit to its logical end but have not been successful owing to a myriad of applications for joinder and consolidation with ELC petition 47 of 2011 filed by the plaintiff.
10. In the grounds of opposition, the Interested Party stated that the motion is bad in law and filed in bad faith aimed at delaying the hearing and determination of the main suit. That the Plaintiff/Applicant has concealed relevant material facts regarding the status of the suit land and is an abuse of the due process of the court as it seeks orders initially sought in a previous application and to which this Court already gave directions on the 23rd day of September 2020.
11. It also contended that the application is defective as drawn since it seeks for review of orders issued on the 13th day of December 2019 and further extended on the 23rd day of September 2020 yet the Applicant has failed to cite the proper reasons for seeking review of orders. That the Applicant has approached this Court with dirty hands since they have already performed the acts that they are approaching this Court to allow them to perform.
12. The Interested Party also filed a notice of motion dated 31st August 2023 supported by an affidavit sworn the same date by Salome Wangui Kamau seeking for the following orders;
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. That this Honourable Court be pleased to issue a temporary injunction against the Plaintiff/ Respondent by itself, its agents, servants and/or assigns or any other person working under the directions and command of the Respondents from erecting a fence and/or barring or preventing the Intended Interested Party/Applicant, its agents, employees and worshipers from accessing the church building erected on Plots Nos. 7 and 8 on LR No. 11379/3 in Nasra Phase II (Block HI) until hearing and determination of the main suit.
 - v. Costs be in the cause.
13. The motion was based on the grounds that the Interested Party is the bonafide beneficial owner of Plots No. 7 and 8 on LR No. 11379/3 in Nasra Phase II (Block HI) all measuring approximately 818 Acres where the suit land is situated. The Interested Party stated that it has a prima facie case with a probability of success and the loss and suffering to be occasioned to them if the interlocutory injunction sought is not granted cannot be compensated by an award of damages. That it is only fair, just and on a balance of convenience that the interlocutory orders sought be granted to them.
14. The Interested Party stated that in the year 2021, they engaged the owners of Plot 7 and 8 on LR No. 11379/3 Nasra Phase II being Samuel Kamau Njuguna and Stephen Mwangi Cichuhi respectively who were members of the Defendant with an intention to purchase their shares in the said parcels of land as they held certificates of shareholders with respect to those plots.
15. The Interested Party further stated that they conducted a search of the Title for LR No. 11379/3 availed to them and established indeed the same was registered under the Defendant's name and the plots were vacant. That in 15th September 2021 the Interested Party entered into a sale agreement with the said beneficial owners/shareholders of the Defendant's plots Nos.7 and 8, paid the purchase price and was issued with clearance Certificates Nos. 1235 and 1236 on L.R. No. 11379/3 (Block HI).



16. That the Interested Party built their church, Eastlands Community Church on the plots and sometime on 23rd August 2023, the Plaintiff hired armed personnel and goons to cordon and fence off all the land where the church is situated adjacent to the suit land barring them from entry thus seeks injunctive orders against the Plaintiff.
17. In response to the Interested Party's motion, the Plaintiff filed a replying affidavit sworn on 25th October 2023 by Shiraz G.K Ramji, its Director. Mr Ramji deposed that the original title to the suit land is in its custody and the court issued orders directing that status quo prevail as of that date relating to title, possession and use of all that suit land. That the Interested Party has admitted that they had engaged the alleged owners of plots 7 and 8 on property L.R. No. 11379/3 Nasra Phase II allegedly owned by certain persons who are purported members/shareholders of the Defendants sometime in the year 2021.
18. The Plaintiff contended that the Interested Party has not produced the alleged search conducted before entering into the sale agreement confirming that it did not conduct due diligence. Further, since the agreement to purchase the plots on the property were entered into by and between the Interested Party and the Defendant, indicates that both parties are in breach of the Court orders in subject and the Interested Party is a trespasser on the suit land.
19. The Plaintiff maintained that at the time when the status quo order was issued by this Court and before the Interested Party and its worshipers trespassed on the land, they already had a permanent perimeter wall made of stone but between 8th and 10th May 2021, it was subjected to demolitions by unscrupulous persons, violating their right to quiet possession which incident was covered by media houses such as KTN news on 9th May 2021.
20. The Plaintiff stated that its application dated 17th August 2023 seeks to restore the position of status quo that subsisted at the issuance of this Courts Order.

Submissions

21. With respect to the two applications, the Interested Party filed submissions dated 22nd November 2023. They framed their issues for determination to include; whether they have met the conditions for the grant of interlocutory injunction and whether the Plaintiff has discharged the principles for setting aside and/or varying the interlocutory orders of this Honourable Court issued on the 13th day of December 2019 and further on the 23rd day of September 2020.
22. While relying on the case of *Mawa Family Limited v Amica Savings & Credit Co-op Society Ltd & another* (Civil Case 2 of 2022) [2022] KEHC 635 (KLR) (16 June 2022) which cited with approval the holding in *Mrao Ltd -Vs- First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125 on what constitutes a *prima facie* case, the Interested Party submitted that they have set out a *prima facie* casewith a probability of successhaving demonstrated that they have a legitimate interest in the suit property having purchased it from the shareholders of the Defendant. That after purchasing the property built the church where they have been carrying out all its religious activities with the knowledge of the Plaintiff until the Plaintiff erected the perimeter wall.
23. The Interested Party also submitted that they will suffer irreparable injury which would not be adequately compensated by an award of damages if not allowed to access the church. They aver that the balance of convenience tilts in their favour direly need to access the church for purposes of their worship and church activities since they do not have any other place to conduct their worship. Further, that Interested Party has heavily expended on purchasing the plots and erecting the church and would



suffer greater loss and damage if not allowed access to worship in the church pending the hearing and determination of the main suit while the Plaintiff stands to suffer no loss if the same is allowed.

24. The Interested Party submitted that since the issuance of the court orders of the 13th day of December 2019 and the 23rd day of September 2020, the Plaintiff has not at all shown any change in circumstances to necessitate the filing of the present application seeking further injunctive orders and neither has it filed any contempt application before this Honourable Court citing anyone for contempt of the status quo orders issued. In support the Interested Party cited the case of *Kimeu Kieti & 184 Others v Kenya Meat Commission* [2015] eKLR.
25. Further, they submitted that the Plaintiff is underserving of the orders sought in its application as they have approached this Court with dirty hands and should not as such benefit from the fruits of equity. This is because as at the time when the Plaintiff moved this Court for the order authorizing it to construct a boundary wall on the suit land, the Plaintiff had already unilaterally and without the permission of this Court proceeded to erect a perimeter wall and now approaches this Court to sanitize its criminal and illegal acts.

Determination:

26. I have considered the two applications together with the respective supporting affidavits and the annexures thereof; the grounds of opposition by the Interested Party, and replying affidavit filed by the Defendant. I have also considered the submissions filed by the interested party and below is my analysis and findings.
27. This Court issued orders on 13th December 2019 that read as follows;
 1. That application to be served for hearing inter partes on 25th February 2020.
 2. That until then, the status quo prevailing as of the date hereof relating to title, possession and use of all that parcel of land known as L.R. No. 209/9406 shall be maintained.
 3. That the O.C.S Dandora Police Station shall ensure that the order is complied with.
28. This order was extended on 23rd September 2020 until determination of the suit and or until further directions by the Court. The suit has not been determined and no further directions have been issued.
29. The Plaintiff has moved this court alleging that the Defendant is in contempt of the order issued when they demolished the perimeter wall that was around the suit land and engaged with Interested Party in selling the alleged plots 7 and 8 on property L.R. No. 11379/3 Nasra Phase II which is part of the suit land.
30. In response, the Defendant stated that it is the Plaintiff who is contempt of the status quo orders for entering the suit land, demolishing structures thereon and erecting a perimeter wall around the land. They further stated that the Plaintiff has filed a fresh application seeking to put up a wall which they have already done without permission from the court. It is notable that the Defendant neither denied the allegations by the Plaintiff of demolishing the perimeter wall despite there being a status quo order nor the allegation of engaging the Interested Party in the purchase of the plots alleged in the suit land.
31. At the time of issuance of the status quo order, the Interested Party had not purchased plots Nos.7 and 8 thus drawing the inference that there was no church erected on the suit plot which would form part of the status quo to be maintained. The Interested Party said they purchased from persons who claimed to be members of the Defendant which then makes it difficult for the Interested party to exclude itself from being bound by the existing order. The Defendant who was aware of the orders proceeded to



issue clearance certificates and share certificates to which is in breach of the limb of the order on status of possession, use and title.

32. Since the Interested Party obtained their interest in the suit land from members of the Defendant, it follows that their title is dependent on the determination of the validity or otherwise of the Plaintiff's claim. Further, having acquired the land during the pendency of this suit, I am not persuaded that they have demonstrated a prima facie case. The balance of convenience tilts in upholding the orders issued on 13th December 2019 and extended on 23rd September 2020. Therefore, granting the Interested Party an injunctive order sought will amount to this court stamping authority a contemptuous act. It follows that the application by the Interested Party is without merit.
33. Vide a letter dated 21st October 2022, the Deputy Inspector General, Kenya Police Service addressed to the Deputy Registrar, Environment and Land Court, confirmed that the Plaintiff reported the alleged demolishing of the perimeter wall by unknown persons and unauthorized persons trespassing on the land in contravention of the order requiring maintenance of the status quo. The Police stated that they lack express directions to oversee /assist in the demolition of any structures on the said land and that also the enforcement of the order to maintain status quo has proved difficult as the action on the part of the Service has not been explicitly specified thus sought for the guidance of the court.
34. The Plaintiff has not taken out contempt proceedings against the OCS of Dandora Police station and there is no evidence that they were served with this application. Consequently, I find no basis has been made to warrant the grant of prayer (2) of the application dated 17th August, 2023.
35. Further, the applicant has not moved the court to review the orders extended on 23rd September 2020 and prayer 3 and 4 of the application is essentially urging the court to do so. Section 80 of the [Civil Procedure Act](#) and order 45 of the [Civil Procedure Rules](#) set out parameters to be met for an order of review to issue. There is nothing stated in the grounds provided in support of the application that touch on those perimeters which makes me to conclude that the orders sought are unmerited. Further, in prayer 5, the Applicant sought police security for purposes of implementing the orders sought in prayer 3 and 4 which I have dismissed. It follows that prayer 5 also collapses.
36. In the result, the Plaintiff's application dated 17th August 2023 is without merit and is dismissed with costs to the Defendant.

DATED, SIGNED & DELIVERED AT NAIROBI THIS 18TH OF APRIL 2024.

A. OMOLLO

JUDGE

