



Gitau & another (Suing as Trustees of Full Gospel Churches of Kenya) v Ocholla & 2 others (Environment & Land Case 171 of 2018) [2024] KEELC 4350 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4350 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 171 OF 2018**

OA ANGOTE, J

MAY 30, 2024

BETWEEN

BISHOP GEOFFREY MUTHEGA GITAU 1ST PLAINTIFF

BISHOP ELI ROP 2ND PLAINTIFF

SUING AS TRUSTEES OF FULL GOSPEL CHURCHES OF KENYA

AND

HON OKOTH OCHOLLA 1ST DEFENDANT

THE ATTORNEY GENERAL 2ND DEFENDANT

REV STEPHEN MBOGO NJUE 3RD DEFENDANT

RULING

1. The 3rd Defendant has, through a Notice of Motion application dated 14th November 2023, sought for the following orders:
 - a. The Plaintiff/ Respondents (Bishop Geofrey Muthega Gitau, Bishop Eli Rop Suing as Trustees of Full Gospel Churches of Kenya) in their own capacity, their agents, employees and assigns be restrained from undertaking any activity, trespassing, construction, development or disposition of the subject parcel namely Plot D Mathare North Commercial Zone, Plot Numbers 225, 134, 236A, 133, 234A, 237A, 222, 223, 226 and 227A pending the hearing and determination of this suit.
 - b. The honourable court do issues orders to preserve the suit property namely Plot D Mathare North Commercial Zone, Plot Numbers 225, 134, 236A, 133,



234A, 237A, 222, 223, 226 and 227A pending the hearing and determination of this suit.

2. The application is on the grounds that the 3rd Defendant is the bona fide owner of the suit properties and that the Plaintiffs have trespassed on the subject land and are undertaking construction thereon which is likely to interfere further with the 3rd Defendant's peaceful ownership and occupation thereof.
3. In the Affidavit sworn in support of the application by the 3rd Defendant, he deponed that this court had earlier granted the Plaintiffs' application dated 18th October 2019 for construction of a temporary fence pending hearing and determination of this suit and that the court later set aside these orders on 11th November 2023 following his application.
4. It was deposed by the 3rd Defendant that the court noted that the Plaintiffs' actions to erect a permanent perimeter wall amounted to abuse of court process and that the Plaintiff has recently initiated a construction on the subject property.
5. The Plaintiffs opposed the application vide a Replying Affidavit sworn by Rev. John Karuri who deposed that the Defendant has not proved beneficial or legal ownership of the suit property or how he acquired such ownership; that the 3rd Defendant has not shown the alleged trespass or interference with the neighbouring plots to warrant an injunction and that the suit parcel of land belongs to the church since it was allotted to it in 1993 and is in a fenced parcel measuring half an acre which has church buildings.
6. Rev. Karuri deponed that the parcel of land is part of a bigger portion of land known as LR Number 7879/4- Drive-in Estate, which has been the subject of various cases between the County Government of Nairobi and a private developer and that pursuant to the confusion over the suit property, the City County of Nairobi has even disowned all allotment letters in Mathare Zone, including the letters relied on by the Defendants.
7. Rev. Karuri deponed that the 3rd Defendant has come to court with unclean hands and has not disclosed that he was a pastor at the church from 2002 to 2016, during which time the church was in possession of the entire place, and the size of the land has never reduced to what has been alleged by the Defendants and that the 3rd Defendant disagreed with the church leaders and ran away with the original allotment letter for the suit property.
8. According to the deponent, the 3rd Defendant previously acknowledged that the church was the owner of the suit property when the 3rd Defendant entered into an agreement on behalf of the church allowing Safaricom Limited to put up a site for installation of Safaricom Base Stations on the parcel of land and that the 3rd Defendant at that time did not raise any claim of ownership.
9. Both parties filed written submissions and a list of authorities which I have considered.

Analysis and Determination

10. A brief background to this suit is that the Plaintiffs, in the main suit, have claimed that the 3rd Defendant, at the time of his departure from the Full Gospel Churches of Kenya, took the original documents pertaining to the suit property and that the Defendants sent thugs who demolished the perimeter wall surrounding the church and stole chairs and utensils.
11. They assert that the Church has entered an agreement with Safaricom Ltd in which the latter have set up apparatus on the plot for effective distribution of their network and an annual instalment is paid to the Plaintiffs.



12. The Plaintiffs have consequently sought for an injunction against the Defendants to prevent them from interfering with their quiet enjoyment of the suit property, damages for demolition of the wall, furniture damages and stolen utensils, and an order to compel the 3rd Defendant to return the original allotment letter, payment receipts and other original documents pertaining to the suit property.
13. In his defense, while the 3rd Defendant admitted that he served as a pastor of the Plaintiffs church, he denied sending thugs to the church. He claims that the Plaintiffs have constructed and covered more parcels of land than was allocated to them and that apart from Plot D, the Plaintiffs have constructed on Plot Nos. 133, 134, 225, 234, 236, 237A, 227A, 222, 223 and 226.
14. The 3rd also admits that there is an agreement with Safaricom but that the apparatus by Safaricom have been constructed on the extra plots occupied illegally by the Plaintiffs and not on Plot D, which belongs to the Plaintiffs' church.
15. The Plaintiffs in this matter have sought that an order of temporary injunction be issued against the Defendants to restrain them from illegally trespassing, occupying, developing, leasing or in any way interfering with the suit land pending the hearing and determination of the main suit.
16. The law on the grant of interlocutory injunctions is prescribed under Order 40 Rule 1 of the Civil Procedure Rules, 2010 as follows:

“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 if 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.”

17. As set out in the locus classicus case of *Giella vs Cassman Brown* (1973) EA 358 and by the Court of Appeal in *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR, an applicant seeking an interlocutory injunction must satisfy the court on the following three requirements, that:
 - a. They have a prima facie case with a probability of success;
 - b. They will otherwise suffer irreparable injury which would not adequately be compensated by an award of damages; and
 - c. If the court is in doubt, it will decide an application on the balance of convenience.”
18. The first requirement is for the Plaintiffs to satisfy this court that they have a prima facie case. A prima facie case was defined in *Mrao Ltd vs First American Bank of Kenya and 2 others*, (2003) KLR 125 as: -

“A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing



itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

19. The 3rd Defendant claims that he is the bona fide owner of the suit properties; that the Plaintiffs have trespassed on the subject land and are undertaking construction thereon and are likely to interfere further with his peaceful ownership and occupation thereof.
20. The 3rd Defendant has supported the application by exhibiting the orders of this court issued on 10th March 2020, which the court allowed the Plaintiffs to construct a temporary fence; orders issued on 19th March 2021 revoking the orders issued on 10th March 2021 and photographs of a construction site.
21. On their part, the Plaintiffs have annexed correspondences between themselves and the Nairobi City Council with respect to the suit property exchanged between 1993 and 2018; receipts to Nairobi City Council with respect to Plot D, Mathare North Commercial Zone for payment of search fees, survey fees, rates, clearance and occupation and the contract between the Plaintiff and Safaricom Ltd.
22. Having perused the documents, the court finds, prima facie, that the 3rd Defendant has not established any interest or ownership rights that he may have over the suit property. He has neither presented the letters of allotment or the survey map which he sought to rely on. He has additionally not established how in fact he obtained ownership of the said property.
23. In the absence of such documents as proof of ownership, this court must find that the 3rd Defendant has not established that he has a prima facie case with a likelihood of success.
24. Seeing as the 3rd Defendant has not established legal rights or any legal proximity to the suit property, this court must find that the applicant does not stand to suffer irreparable injury. Irreparable injury is defined in Halsbury’s Laws of England, Third Edition, Volume 21, paragraph 739, page 352 as follows:

“It is the very first principle of injunction law that prima facie the Court will not grant an injunction to restrain an actionable wrong for which damages are the proper remedy. Where the Court interferes by way of an injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds first, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter in question”
25. The 3rd Defendant has argued that the Plaintiffs are currently undertaking construction on the suit property. This court notes that neither party has presented any evidence of ownership of the suit property. While the Plaintiffs have presented receipts showing payment of different sums to the Nairobi County Council, this falls short of the legal standard of ownership by way of allotment.
26. On this basis, the court finds that the 3rd Defendant/Applicant has not fulfilled the test for this court to accord him the remedy of an injunction.
27. In these circumstances, where the question of ownership of the suit property is not apparent and is pending before this court, it would be in the best interests of both parties that the prevailing situation on the suit property remains as it is, and the status quo to be maintained.



28. The court in *TSS Spinning & Weaving; Company Ltd vs Nic Bank Limited & another* [2020] eKLR, unpacked the purpose of a status quo order as follows:

“In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention.”

29. Such purpose was further explained in *Kenya Airline Pilots Association (KALPA) vs Co-operative Bank of Kenya Limited & another* [2020] eKLR, as follows:

“...By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

30. Status quo orders are distinct from injunction orders because they only seek to preserve the situation as it is and are not dependant on proof of right. This position was articulated in *Republic vs The Chairperson Business Premises Rent Tribunal at Mombasa (Bench Mochache) Exparte Baobab Beach Resort (Mombasa Limited) & Monica Clara Schriel* as quoted in *Saifudeen Abdullahi & 4 Others* [2013] eKLR as follows:

“In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.” (see in *The Matter Of An Application By Saifudeen Abdullabhai & 4 Others For Leave To Apply For Judicial Review And For Orders Of Certiorari And Prohibition*)”

31. Considering the circumstances of this case, status quo orders will therefore be suited. For those reasons, the following orders shall issue:

- a. The current status quo of the suit property, being Plot D Mathare North Commercial Zone, Plot Numbers 225, 134, 236A, 133, 234A, 237A,222, 223, 226 and 227A, (the suit properties) to be maintained, meaning that there shall be no transaction over the suit properties whatsoever including but not limited to construction of any nature, alienation, charging, mortgaging, leasing or transferring of the proprietary interest of the suit property until this suit is heard and determined.
- b. For avoidance of doubt, there shall be no further constructions or development by the Plaintiffs or the Defendants on the suit property, being Plot D Mathare North Commercial Zone, Plot Numbers 225, 134, 236A, 133, 234A, 237A,222, 223, 226 and 227A and any constructions by the Plaintiffs or Defendants that is ongoing on the suit property to forthwith cease pending the hearing and determination of the suit.



c. That costs of the application to be in the cause.

Dated, signed and delivered virtually in Nairobi this 30th** day of May, 2024.

O. A. Angote

Judge

In the presence of;

Mr. Ochich for 3rd Defendant/Applicant

Mr. Mutemei for Plaintiff

Court Assistant: Tracy

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RULING

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