



REPUBLIC OF KENYA



Kogo v Muchanganyiko Cooperative Society & another (Environment & Land Case E117 of 2023) [2024] KEELC 4066 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4066 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E117 OF 2023**

MN MWANYALE, J

MAY 9, 2024

BETWEEN

EDWIN MARTIM KOGO PLAINTIFF

AND

MUCHANGANYIKO COOPERATIVE SOCIETY 1ST DEFENDANT

RICHARD YEGO LELEI 2ND DEFENDANT

RULING

1. Before Court for determination is the Notice of Motion application dated December 11, 2023 seeking orders as follows;
 - a. Spent
 - b. An order of temporary injunction restraining the Defendants by themselves, their agents and/or assigns or any other person from dealing, encroaching, entering into or otherwise interfering with the Plaintiff's quiet possession of 0.5 acres he currently occupies out of the parcel of land known as Kangawal Lr 9399/17 pending hearing and determination of this application. Inter-partes or further orders and thereafter pending hearing and determination of this suit.
 - c. The Land Registrars, Nandi County do register a restriction upon the said land parcel No. Kangawal Lr 9399/17 pending the hearing and determination of this application inter-partes or further orders of the Court and thereafter pending hearing and determination of this suit.
2. The application is based on the grounds interalia; -
 - i. Plaintiff has been in quiet possession and without interruption of 0.5 acres out of the suit land parcel No. KANGAWAL LR 9399/17 since 1994.



- ii. Plaintiff has a prima facie case, and there was danger of the Plaintiff/Applicant being evicted after summons are served or the land being transferred.
 - iii. Respondents may charge, waste, or otherwise interfere with the Plaintiff's possession and there would not suffer prejudice, if orders are granted in any case the Plaintiff/Applicant has been living in the suit property for over 20 years.
 - iv. The application is supported by the affidavit of the Applicant who deposes that his late father Boit Kipkerio Koros had been employed at Nandi Tea Estate Limited since 1990 and was allocated parcel No. Kangawal Lr 9399/17 plot No. 31 where the Plaintiff had been living since 1988; and his said father passed on 12th December 1994 where he took out Letters of Administrations.
 - v. That he was continued enjoying quiet and peaceful occupation of plot number 31, extensively developing the same, by building houses, planting trees fenced and framed thereon without interruption.
 - vi. That the local administration was aware of his occupation and granted him permission to cut down trees he had planted over 20 years ago.
 - vii. That Nandi Tea Estates had transferred the whole property Kangawal Lr 9399/17 to the 1st Defendant for purposes of issuing title deeds to respective beneficiaries including his late dad's Estate.
 - viii. That the newly appointed officials were scheming to defraud him yet had lived on the property over 12 years and his plead to the new officials had fell on deaf ears.
 - ix. That he had a prima facie case as he has lived on the property for 20 years, developed extensively the same which development is inconsistent with the Defendant's title, that there is no defence to the currently claim.
 - x. That the balance of convenience tilts in his favour.
3. This application was unopposed and the date for hearing was taken by consent before the Deputy Registrar, and hence the matter proceeded as undefended.
 4. In spite of the application being unopposed, the same shall be subjected to a merit review so as to determine whether the application is merited.
 5. On 14/3/2024 Mr. Kipkemboi Learned Counsel for the Applicant made oral submissions, in which he submitted that the Applicant had been on the suit property for over 20 years, which property belonged to his father and the 1st Respondent was registered so as to allocate the suit property to the persons therein.
 6. It was his submissions, that the Applicant's father was an employee of the Tea Estate which transferred to the 1st Respondent, the parcel was to be subdivided to other beneficiaries including the Applicant's late father, and the Applicant urged the Court to allow the application, as he had demonstrated prima facie case with a probability of success relied on the decision in the case of *Giella v Cassman Brown*.
 7. As the application was unopposed the Court reserved its ruling for delivery today.

Issue For Determination: -

8. The only issue for determination is whether the application is merited.



9. The Applicant deposes that his later father had been allocated the suit parcel as a former employee of Nandi Tea Estates Limited.
10. The said allotment letter however was not exhibited before Court.
11. The Applicant exhibited a letter from Nandi Hills Town Council seeking permission to establish a tree nursery bed, the said letter was dated 11/8/2003, but it does not indicate in which property the said nursery bed was to be erected.
12. The extensive developments deponed on by the Applicant were not exhibited before Court, there is therefore no prima facie case established and the application does not meet the threshold for a grant of a temporary injunction and the same is destined to fail as it is hereby dismissed, costs in the cause.
13. Orders accordingly.

RULING, DELIVERED AND DATED AT KAPSABET THIS 9TH DAY OF MAY 2024.

HON. M. N. MWANYALE,

JUDGE

In the presence of; -

Mr. Kipkemboi for the Applicant

Mr. Tallam for the Respondents

