



Mkota & 8 others v Jimbim Investments Limited & 2 others (Enviromental and Land Originating Summons 3 of 2023) [2024] KEELC 4914 (KLR) (20 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4914 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 3 OF 2023**

EK MAKORI, J

JUNE 20, 2024

IN THE MATTER OF A CLAIM FOR: ADVERSE POSSESSION PURSUANT TO SECTION 38 OF THE LIMITATION OF ACTIONS ACT CHAPTER 22, LAWS OF KENYA

BETWEEN

- MWANA MGENI SALIM MKOTA 1ST APPLICANT**
- KOMBO SALIM MKOTA 2ND APPLICANT**
- SESAID SALIM MKOTA 3RD APPLICANT**
- DAGILASI MICHAEL MKOTA 4TH APPLICANT**
- SAID MBARAK SAID 5TH APPLICANT**
- ALI MBARAK SAID 6TH APPLICANT**
- GADAFI MBARAK SAID 7TH APPLICANT**
- JUMA BEGANDE SALIM MKOTA 8TH APPLICANT**
- NDUKU MBARAK SAID 9TH APPLICANT**

AND

- JIMBIM INVESTMENTS LIMITED 1ST RESPONDENT**
- NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES 2ND RESPONDENT**
- SULTAN PALACE DEVELOPMENT LIMITED 3RD RESPONDENT**



RULING

1. The applicants, in the Notice of Motion dated 8th of August 2023, supported by the annexed affidavit sworn by one Mgeni Salim Mkota on 8th August 2023, on behalf of the other applicants in a representative capacity significantly seek an interlocutory injunction directed against the respondents or their agents and representatives from alienating, destroying, reselling, offering for sale, auctioning, mortgaging, working on, evicting, trespassing into, demolishing, flattening, misusing, utilizing, or in any other manner meddling whatsoever in all that land parcel Plot No. 1075/III/MN Title No. CR. 19153, pending the hearing and determination of the main suit (O.S). The Ocs Kijipwa Police Station is to be directed by this Court to enforce the orders, and the costs of the application be provided.
2. The 2nd respondent filed an extensive replying affidavit in opposition to the Notice of Motion deposed on 18th September 2023 by one Hellen Koech, an employee of the 2nd respondent. Despite service through advertisement, the 1st and 3rd respondents did not enter an appearance or reply to the Notice of Motion.
3. The applicants assert their right to occupy 8.169 hectares of land Plot No. 1075/III/MN Title No. CR. 19153 since time immemorial. They argue that their uninterrupted stay for a period ranging between 23 and 36 years entitles them to the land under the doctrine of adverse possession. They further claim that any sale that has occurred over time has happened with the full knowledge of the purchasers that they have been on the ground for that period of time.
4. In its reply to the Notice of Motion, the 2nd respondent gave a long chronology of its mandate and how it purchased several parcels of land and part of the land claimed by the applicants with full authority and sanction from its relevant decision organs.
5. The suit properties were later sold in 2010. The 2nd respondent contends it had no interest in them since 2011, when the transfers happened to third parties.
6. I frame the issues for this Court's determination as whether an interlocutory injunction should be issued at this stage and who should bear the costs of the current application.
7. The applicants in the main suit claim to have acquired the suit properties by dint of the operations of the doctrine of adverse possession. The 2nd respondent has no interest in the land, having sold the same in 2010 with transfers to third parties in 2011. The 2nd respondent thus avers they are wrongly joined in this lawsuit and will seek to be removed from the proceedings at the appropriate time. The 1st and 3rd respondents have not responded to the claim.
8. At this point, the main focus and scenario will be to maintain the substratum of the suit. Status quo order rather than temporary injunction will be germane to issue see: *Mburu v Kibara & 2 others* (Environment & Land Case 237 of 2021) [2022] KEELC 3226 (KLR) (28 July 2022) (Ruling):

“The Black’s Law Dictionary, Butter Worth’s 9th Edition, defines status quo as a Latin word which means ‘the situation as it exists.’ The purpose of an order of status quo has been reiterated in a number of decisions. In the case of “*Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another* [2013] eKLR, Odunga J. stated: -

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made, or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing



state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”

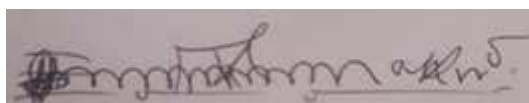
26. In the case of “*Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another* [2020] eKLR, the purpose of a status quo order was explained as follows:

“... 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.”

9. At this point, the Court will issue status quo orders as follows:

The Applicants to remain in occupation of the 8.168 hectares of land parcel Nos. 1075/III/MN Title No. CR 19153 is registered under Sultan Palace Development Ltd, and the Registration will persist until the current suit is heard and determined—costs in the cause.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 20TH DAY OF JUNE 2024.



E. K. MAKORI

JUDGE

In the Presence of:

Mr. Osoro for the Applicant

Mr. Macharia for 2nd Respondent

Happy: Court Assistant.

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